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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussain

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Introduction

1. The present report is the sixth report presented by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain (India), since the mandate was established by Commission on Human Rights resolution 1993/45 of 5 March 1993. It is submitted pursuant to resolution 1998/42. Chapter I of the present report contains the terms of reference for the discharge of the mandate. In chapter II, the Special Rapporteur presents an account of the activities undertaken within the framework of his mandate in the past year. Chapter III provides a brief discussion on a number of issues which the Special Rapporteur considers to be important for the development of the right to freedom of opinion and expression. Chapter IV contains brief summaries of urgent appeals and communications to and from Governments, along with observations of the Special Rapporteur. Lastly, chapter V contains the conclusions and recommendations of the Special Rapporteur.

I. TERMS OF REFERENCE

2. The Special Rapporteur refers to his previous reports as regards the mandate and methods of work adopted by him. In accordance with the need to examine a number of specific questions concerning the right to freedom of opinion and expression, the structure of the present report is along the same lines as the previous report. Consequently, the main body of analysis of issues related to the exercise of the right to freedom of opinion and expression will be discussed in section III, focusing on matters referred to by the Commission on Human Rights in resolution 1998/42 and which the Special Rapporteur considers as warranting special attention. These issues include the right to seek and receive information, concerns relating to national security laws and to criminal libel, the new information technologies, as well as the enjoyment of the right to freedom of expression by women.

II. ACTIVITIES

3. The Special Rapporteur has received a large number of allegations concerning cases of violations of the right to freedom of opinion and expression in 1998. As was the case in previous years, the Special Rapporteur was only able to deal with a very limited number of requests for information to some Governments, owing to the insufficient financial and human resources to fulfil his mandate in the manner he would deem appropriate. The matters raised in previous reports to the Commission on Human Rights regarding the circumstances of work (E/CN.4/1995/32, paras. 92-95; E/CN.4/1996/39, para. 6; E/CN.4/1997/31, para. 7 and E/CN.4/1998/40, para. 3) unfortunately remain of great concern. The mandate requires a substantially increased pool of resources. Within the current constraints, the Special Rapporteur has engaged in an exchange of views with Governments only with regard to a limited number of cases, which are discussed in section IV.

4. It should thus be emphasized that the countries discussed in the respective sections in no way reflect the extent of the problem worldwide, as indeed violations of this right take place in almost every country in spite of the emergence of an increasing number of national institutions which are regionally working for the promotion and protection of human rights. To avoid

unnecessary duplication of effort, the Special Rapporteur has increased his cooperation with other special rapporteurs. In the past year, he has sent joint urgent appeals together with the Working Group on Arbitrary Detention, the Special Rapporteur on torture, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteurs on the situation of human rights in the Democratic Republic of the Congo, and Nigeria, and the Special Rapporteur on the sale of children, child prostitution and child pornography.

5. Closer cooperation is envisaged with treaty bodies and human rights field operations, as well as other specialized bodies within the United Nations system, and regional intergovernmental and non-governmental organizations, particularly at the local level, concerned with the right to freedom of expression. In this regard, the Special Rapporteur held two meetings (Paris, May 1998 and Montreal, September 1998) with Mr. Alain Modoux, Director of the Unit for Freedom of Expression and Democracy of UNESCO, to discuss closer cooperation between the two mechanisms. It was an occasion to examine the possibility for UNESCO to follow up the Special Rapporteur's recommendations by providing expertise to the States undergoing a democratization process to assist them in the field of media legislation or transformation of their Government-controlled radio and/or television into an editorially independent public broadcasting service. The Special Rapporteur would like to encourage this kind of cooperation, which can help to realize the right to freedom of opinion and expression.

6. From 26 to 29 May 1998, the Special Rapporteur attended the fifth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and advisory services programme, held in Geneva. He also addressed the fourth session of the Sub-Commission's Working Group on Minorities about his mandate.

7. The Special Rapporteur visited Geneva from 30 March to 3 April 1998 for consultations and to present his report to the Commission on Human Rights at its fifty-fourth session. During this period, the Special Rapporteur met, among others, with representatives of the Government of Turkey to follow up on his earlier visit to that country and with the representative of Hungary to discuss his proposed visit to that country.

8. The Special Rapporteur considers the carrying out of country visits to be an essential element of the mandate. From 20 to 24 October 1998, the Special Rapporteur undertook a mission to Malaysia, followed by a visit to Hungary from 9 to 13 November 1998, on which he has submitted separate reports to the Commission at its current session (E/CN.4/1999/64/Add.1 and 2).

9. To date, the Special Rapporteur has a standing invitation to visit the Sudan from the Government of that country and hopes to visit in May or June 1998. While he has also been in touch with the Governments of Albania, Argentina, Egypt, Indonesia, the Democratic People's Republic of Korea, Peru, Sri Lanka, Tunisia and Viet Nam to examine in situ the realization of the right to freedom of opinion and expression, he regrets that invitations have not so far been received from them. The Special Rapporteur wishes to reiterate his interest in visiting those countries.

10. From 24 to 27 June 1998, the Special Rapporteur participated in a seminar on Press and Democracy in Kathmandu, Nepal. The Special Rapporteur had the opportunity to attend another conference in Montreal, Canada, from 10 to 12 September 1998 on "Human Rights and the Internet" (see para. 31 below). Furthermore, he attended a meeting in New York with representatives from the Committee to Protect Journalists to discuss specific concerns regarding the mandate, particularly in view of the visit the Special Rapporteur was going to undertake to Malaysia. Lastly, the Special Rapporteur participated in the Commonwealth Editors Forum, held in Penang, Malaysia, on 21 October 1998.

11. The Special Rapporteur would like to reiterate that the role of non-governmental organizations in furthering the promotion and the protection of the right to freedom of opinion and expression cannot be overestimated. Indeed, it is those organizations which spearhead these concerns and are forcefully advocating, monitoring and lobbying for human rights. Some of them have gone out of their way to help the Special Rapporteur in his mission. The Special Rapporteur wishes to express his special thanks to Article 19 - The International Centre Against Censorship, which continues to provide information and material relevant to the promotion and protection of the right to freedom of opinion and expression to the Special Rapporteur.

III. ISSUES

A. The right to seek and receive information

12. In resolution 1998/42 (para. 9 (d)), the Commission invited the Special Rapporteur to "develop further his commentary on the right to seek and receive information and to expand on his observations and recommendations arising from communications". In this regard, the Special Rapporteur expresses again his view, and emphasizes, that everyone has the right to seek, receive and impart information and that this imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems - including film, microfiche, electronic capacities, video and photographs - subject only to such restrictions as referred to in article 19, paragraph 3, of the International Covenant on Civil and Political Rights.

13. Freedom of the press is a vital step in the free flow of information and in ensuring freedom of expression. It is the fundamental duty of the State to stand as a guarantor for freedom of the press. Every right carries with it a responsibility. Every freedom carries with it an obligation. The press is a powerful influence for good and evil. Ideally, it should be left to the press itself to determine what its responsibilities and corresponding obligations are. Where freedom of the press is wanting or curtailed, people cannot settle their differences through open debate and the authorities overreact, fearing the overall impact of dissent. Uprisings and fear follow. Freedom of the press may not guarantee peace, but it is a vital first step. Therefore, special care has to be taken to ensure that writers, poets, journalists and editors are not intimidated or prevented from expressing their views in their writings through censorship or other covert methods, or official sponsorship of press organs. Abuses against the press, journalists and writers have to be halted by launching investigations and publishing findings, in the press itself or by interested NGOs, with a view to raising public consciousness and

making the Government act according to international standards. The Special Rapporteur appreciates that studies have been done to expose abuses of power to thwart the free expression of views and opinions. The Special Rapporteur, through his missions, would like to continue to lend his support to such exercises. In this regard, his contribution should be assessed objectively. He also wishes to mention in this context the ruling of the Hungarian constitutional court to the effect that freedom of expression protects all opinions, regardless of their value.

14. A genuine writer serves a cause higher than himself, i.e. the cause of the welfare of the people. Although at times a writer may make outrageous statements, even wounding cultural sensitivities and commonly held beliefs, literature remains a basic medium through which imagination and the striving of the human mind are expressed most freely and in the most provocative forms. A writer is a seer in many ways, and a sage in many respects. Any society which stifles its writers closes its windows to fresh ideas and stunts its own growth. The freedom of expression of writers should therefore be strongly defended and their cause encouraged.

15. The Special Rapporteur continues to receive allegations of bias in broadcasting which severely limits or seriously compromises the right to seek, receive and impart information. In this regard, the Special Rapporteur wishes to recall points made in previous reports.

16. There are several fundamental principles which, if promoted and respected, enhance the right to seek, receive and impart information. These principles are: a monopoly or excessive concentration of ownership of media in the hands of a few is to be avoided in the interest of developing a plurality of viewpoints and voices; State-owned media have a responsibility to report on all aspects of national life and to provide access to a diversity of viewpoints; State-owned media must not be used as a communication or propaganda organ for one political party or as an advocate for the Government to the exclusion of all other parties and groups; laws governing the registration of media and the allocation of broadcasting frequencies must be clear and balanced; any regulatory mechanism, whether for electronic or print media, should be independent of all political parties and function at an arms-length relationship to Government; access to technology, newsprint, printing facilities and distribution points should only be regulated by the supply and demand of the free market.

17. With these broad principles in mind, the Special Rapporteur wishes to emphasize that in pre-election periods, and in the interest of enuring the most fully informed electorate possible, the State must ensure that media are given the widest possible latitude. This can be best achieved when, inter alia:

(a) Media inform the public about the political parties, candidates, campaign issues and voting processes; government media are balanced and impartial in election reporting, do not discriminate against any political party or candidate in granting access to air time and ensure that news, interviews and information programmes are not biased in favour of, or against, any party or candidate;

(b) Censorship of any election programme is not allowed and the media are encouraged to broadcast and/or publish election-related programmes and are not penalized for programmes critical of the Government, its policies or the ruling party;

(c) The media are exempt from legal liability for provocative statements by candidates or party representatives; the right of reply is provided, as well as correction or retraction, in cases where defamation is alleged; the manner and extent of remedy is determined by an independent body;

(d) There is a clear distinction between news and press conferences related to functions of office and activities by members of the Government, particularly if the member concerned is seeking election;

(e) Air time for direct access programmes is granted on a fair and non-discriminatory basis; the time allocated to parties or candidates is sufficient for them to communicate their messages and for the voters to inform themselves about the issues, party positions, qualifications and character of the candidates;

(f) Programmes provide an effective opportunity for journalists, current affairs experts and/or the general public to put questions to party leaders and other candidates, and for the candidates to debate with each other;

(g) Media, and especially government media, engage in voter education, including by providing information on how to use the voting process, when and where to vote, how to register to vote and verify proper registration, the secrecy of the ballot, the importance of voting, the functions of the offices under contention and other matters; and

(h) Print and broadcast media make available reports and programmes that will reach the largest number of voters possible, including in minority languages and for those who may have been traditionally excluded from the political process, such as ethnic or religious minorities, women and indigenous groups.

B. National security laws

18. The Special Rapporteur continues to be concerned about the manner in which anti-terrorism and national security laws can, on occasion, be misused by officials agencies to violate both the right to freedom of opinion and expression and the right to seek, receive and impart information. The Special Rapporteur refers to his report on his mission to Malaysia (E/CN.4/1999/64/Add.1) in which the issue of Malaysia's national security laws is discussed.

19. Organized terrorism is a curse for all of civilized society. In their quest to gain headlines in the media terrorist groups resort to acts of spectacular violence. Mainly it is the innocent who are the victims. It is proverbially said that vengeance begets vengeance. Governments on their part may act with equal ferocity in dealing with terrorist activity. A vicious circle follows and needs to be broken. While effective action by Governments

may be necessary, Governments must at the same time ensure that the safety valve of free expression of genuine or supposed grievances is available to its citizen of all hues and opinions.

20. Human rights are sacrosanct but certainly cannot be manipulated to condone, encourage or foment terrorist activities. It is the primary obligation of Government to take pre-emptive action to forestall terrorist activities and restore order and tranquillity. In recent years the United Nations and the Commission on Human Rights have adopted successive resolutions on human rights and terrorism which unequivocally condemn terrorism and incitement of hatred and violence and call upon States to take all necessary effective measures to deal with terrorist groups. Terrorism is a vicious assault on human rights and laws enacted to counter terrorism have to be appreciated in the context of national and international situations.

21. In addition to the problems and issues outlined in his mission reports, the Special Rapporteur notes here that abuse of the powers granted under such laws often lead to: both prolonged and short-term arbitrary detention; torture; extrajudicial, summary or arbitrary execution; disappearances; threats and intimidation; the closure of media outlets; the banning of publications and programming; bans on public gatherings; bans and prohibitions on organizations, groups and associations that are in no way associated with terrorism and violence; strict censorship on all forms of communications; and tolerance of, if not actual support for, the abuses and crimes committed by police, security services, the armed forces and paramilitary groups.

22. As with broadcasting and the print media in pre-election periods, there are several points or principles which must be taken into account within the context of anti-terrorism and national security laws if the rights to opinion, expression and information are to be fully protected and promoted. These points include:

(a) No restriction may be justified on the ground of national security when it is actually intended to protect a Government from embarrassment or exposure of wrongdoing, to conceal information about the functioning of public institutions, entrench a particular ideology or suppress industrial unrest;

(b) Expression which transmits information by or about an organization that has been declared a threat to national security or a related interest may not be punished; expression in a particular language, and especially in a language of a national minority, may not be prohibited;

(c) No restriction on access to information may be imposed unless it has been demonstrated that the restriction is necessary to protect a legitimate national security interest;

(d) The public interest in knowing the information shall be a primary consideration in all laws and decisions concerning the right to obtain information;

(e) The public's right to know must override any justification for trying to stop further publication of information that has been made generally available, by whatever means, whether lawful or not; and

(f) Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law.

23. In setting out these points, the Special Rapporteur reiterates his recommendation to the Commission on Human Rights to endorse the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. The Special Rapporteur remains convinced that the Principles give useful guidance for protecting adequately the right to freedom of opinion, expression and information.

C. Criminal libel

24. Article 19 (a) of the International Covenant on Civil and Political Rights allows a limited restriction on the right to freedom of opinion and expression in the interest of "respect of the rights or reputations of others". The Special Rapporteur's attention has been drawn to cases and a number of instances in which libel and defamation suits, or even the threat of such suits, has had, or has potentially had, a direct and negative impact on freedom of expression, access to information and the free exchange of ideas. The effect is often described as "libel chill", a climate of fear in which writers, editors and publishers become increasingly reluctant to report and publish on matters of great public interest not only because of the large awards granted in these cases but also because of the often ruinous costs of defending such actions.

25. In this regard, the Special Rapporteur wishes to refer to his report on the mission to Malaysia (E/CN.4/1999/64/Add.1) in which he raises the issue of defamation laws used to stifle freedom of expression.

26. International case law in the area of libel and defamation has consistently found in favour of disclosure and public criticism of public figures, when warranted. In this regard, the Special Rapporteur notes that, in *Verbitsky v. Argentina*, in which a writer was convicted under the *desacato* ("contempt") law for defaming the Argentine Supreme Court Minister, the Inter-American Commission on Human Rights stated, "in democratic societies political and public figures must be more, not less, open to public scrutiny and criticism". 1/ In this case, the conviction was reversed and the Government repealed the *desacato* law. The European Court of Human Rights has also considered a number of cases, one of the most famous possibly being *Lingens v. Austria*. In that case a journalist accused the Chancellor of, inter alia, the "basest opportunism" and "immoral" and "undignified" behaviour. 2/ At the time the case came before the courts, Austrian law required that the truth of the allegations be proved. The journalist was convicted partly for failure to do this. On appeal, the European Court held, inter alia, that: the law was unreasonable; it was impossible to prove the truth of opinions; the characterization of the politician had been reasonable; and the journalist's article had been part of a larger political debate and not merely a gratuitous attack on the individual concerned.

27. A review of cases contained in various thematic and country reports before the Commission on Human Rights shows that, in some countries, disclosure of criminal or corrupt behaviour on the part of the authorities and/or officials continue to lead to death threats, harassment, intimidation,

assault and murder - often usually by the armed forces, police, security service or individuals acting with the knowledge of such bodies. This is for instance the case in Croatia where the office of the High Commissioner for Human Rights in Zagreb reported that as of May 1998, some 400 civil and 130 criminal cases for defamation were pending against journalists and publishers.

28. Following on from this, the Special Rapporteur believes strongly that it is critical to raise the public conscience to ensure that criminal laws are not used (or abused) to stifle public awareness and suppress discussion of matters of general or specific interest. At minimum, it must be understood that:

(a) The only legitimate purpose of defamation, libel, slander and insult laws is to protect reputations; this implies defamation will apply only to individuals - not flags, States, groups, etc.; these laws should never be used to prevent criticism of government or even for such reasons as maintaining public order for which specific incitement laws exist;

(b) Defamation laws should reflect the principle that public figures are required to tolerate a greater degree of criticism than private citizens; defamation law should not afford special protection to the president and other senior political figures; remedy and compensation under civil law should be provided;

(c) The standards applied to defamation law should not be so stringent as to have a chilling effect on freedom of expression;

(d) To require truth in the context of publications relating to matters of public interest is excessive; it should be sufficient if reasonable efforts have been made to ascertain the truth;

(e) With regard to opinions, it should be clear that only patently unreasonable views may qualify as defamatory;

(f) The onus of proof of all elements should be on those claiming to have been defamed rather than on the defendant; where truth is an issue, the burden of proof should lie with the plaintiff;

(g) In defamation and libel actions, a range of remedies should be available, including apology and/or correction; and

(h) Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied.

D. New information technologies

29. In resolution 1998/42 the Commission on Human Rights invited the Special Rapporteur to "assess the advantages and challenges of new telecommunications technologies, including the Internet, on the exercise of the right to freedom

of opinion and expression, including the right to seek, receive and impart information", bearing in mind the work undertaken by the Committee on the Elimination of Racial Discrimination.

30. At the outset, the Special Rapporteur wishes to reiterate his opinion that the new technologies and, in particular, the Internet are inherently democratic, provide the public and individuals with access to information sources and will, over time, enable all to participate actively in the communication process. He also wishes to reiterate his view that actions by States to impose excessive regulations on the use of these technologies and, again, particularly the Internet - on the grounds that control, regulation and denial of access are necessary to preserve the moral fabric and cultural identity of societies - ignore the capacity and resilience of individuals and societies - whether on a national, State, municipal, community or even neighbourhood level - often to take self-correcting measures to re-establish equilibrium without excessive interference or regulation by the State.

31. The Special Rapporteur had the opportunity to attend a conference in Montreal, Canada, from 10 to 12 September 1998. The conference was hosted by the Canadian Human Rights Foundation (Fondation canadienne des droits de la personne) and the subject was "Human Rights and the Internet". Participants came from both developed and developing countries. On the basis of the presentations at that conference and discussions with participants, the Special Rapporteur makes the following few observations.

32. It is clear that the Internet is an increasingly important human rights education tool which contributes to a broader awareness of international human rights standards, provisions and principles. It is also one of the most effective tools to combat intolerance by opening the gateway to messages of mutual respect, enabling them to circulate freely worldwide, and by encouraging collective actions to oppose and bring to an end such phenomena as hate speech, racism and the sexual and commercial exploitation of, in particular, women and children. The instinct or tendency of Governments to consider regulation rather than enhancing and increasing access to the Internet is, therefore, to be strongly checked. While perhaps unique in its reach and application, the Internet is, at base, merely another form of communication to which any restriction and regulation would violate the rights set out in the Universal Declaration of Human Rights and, in particular, article 19.

33. Another point to be made is that the ideal of universal access to the Internet should not just remain an ideal. In a large number of countries there still is a huge need to improve, or even install, the technology needed to create access to the Internet; this same need is common in a number of developed countries with regard to remote or marginalized communities and peoples. The inherently democratic character of the Internet will be eroded to the extent that universal access is not achieved. Following on from this, there is a clear and urgent need to ensure that no one language or culture dominates and dictates the use of the technical capacities at the expense of all others. In this regard, the Special Rapporteur notes that participants at the conference were clear: to have an Internet *for* all, it is necessary to have information *from* all.

34. The Special Rapporteur recalls that in his report to the fifty-fourth session of the Commission on Human Rights, he referred to actions by several Governments to prohibit or severely restrict access to new information technologies, including the Internet. Significantly, the instances cited related to developing countries and it is in those and other developing countries where people are most in need of access to these technologies in order to tell their own stories to a worldwide audience. If progress is to be made to defeat racism, hate speech and intolerance on a national and international scale, it is incumbent upon all Governments to see the Internet and other information technologies not as things requiring regulation and restriction but rather as the means to achieve a genuine plurality of voices. The Special Rapporteur strongly believes that the world needs more, not less, speech - in as many languages and reflecting as many cultures as are known to exist.

35. It is the Special Rapporteur's strongly held view that the main challenge presented by new information technologies is not how to impose restrictions creatively in order not to exceed the grounds for restriction set out in international human rights instruments. The challenge is to integrate fully new information technologies into a development process. This process must benefit all equally, must not privilege those who are already among the elite and must open the gateway to information from a diversity of sources. The process must create a capacity to identify that which is common, appreciate that which is different, and combat a use of these technologies which crosses the internationally established threshold, becomes crime and ceases to be speech.

36. The Internet should not be a "law-free zone". The Special Rapporteur is planning to work with other international and national organizations to prevent it from becoming a "safe haven" for conduct threatening human rights. Various forms of Internet watch-activities can be developed to protect consumers and children. But we should not be excessively preoccupied with the dark side of the new technologies for these are giving power and influence to the disenfranchised, empowering the powerless.

E. Women and freedom of expression

37. At its fifty-fourth session the Commission on Human Rights invited the Special Rapporteur, in cooperation with the Special Rapporteur on violence against women, to continue to pay particular attention "to the situation of women and the relationship between the effective promotion and protection of the right to freedom of opinion and expression and incidents of discrimination based on sex, creating obstacles for women with regard to their right to seek, receive and impart information". The Special Rapporteur regrets that constraints of time and resources limited the extent to which the work could be jointly undertaken with the Special Rapporteur on violence against women. This remains an area of critical importance to him and he sincerely hopes that in the near future more deliberate efforts can be made in this area.

38. That being said, the Special Rapporteur notes the important discussions held during the forty-second session of the Commission on the Status of Women (see E/CN.6/1998/12). From these discussions it is clear that central to the issues of equal access for women to rights, equal opportunities for the

enjoyment of rights, and equal treatment in that enjoyment is the actual extent to which women may exercise their rights to opinion, expression and information without discrimination and the degree to which women actually enjoy the right to participation in public life. The Special Rapporteur states again that the problem does not lie in the manner in which international human rights standards have been elaborated but rather in the restrictive and traditional interpretations and applications of human rights law. The Special Rapporteur emphasizes that it is not acceptable for women still to be dependent on men to represent their views and protect their interests nor is it acceptable that women continue to be consistently excluded from decision-making processes that not only affect them but society in general.

39. The Special Rapporteur remains convinced that any real consideration of how to ensure the realization of all human rights for all women necessarily includes consideration of the rights to opinion, expression, participation, information, association and assembly. There can be no doubt that in the absence of these rights, *de jure* or de facto or both, women will remain under-represented and societies will continue to ignore not only their rights and needs but the creative contribution they can make towards a general improvement of societies. It is therefore imperative that real, qualitative and quantitative measures be taken to ensure women's participation, as equal partners, in private and public life. On that basis, the following two points must be kept in mind.

40. First, violence and fear of violence in public and private life remains one of the main concerns of women worldwide and, in order to break the silence and taboos surrounding violence, public awareness campaigns on the impact of violence are essential. These campaigns must be devised with women as full participants and must proceed on the understanding that most women do not seem to seek help from crisis services or the police, because of ignorance, fear or shame. Many women are still not aware of existing laws or their rights and frequently they have no access to the judicial system, especially if they are poor, illiterate or migrants.

41. Second, it is generally acknowledged that violence against women is one of the most constant and enduring characteristics of armed conflict. Efforts to ensure that violence against women is fully incorporated into the Statute of the new International Criminal Court are welcome. Feelings of shame associated with everyday abuses in the context of family and workplace need to be articulated. Unfortunately, there is a history of official inattention to women's experience of disaster and violence. For instance, the suffering of women Hibakusha (atomic bomb survivors) in Japan has been portrayed only through themes of suffering motherhood with the stereotypical mythical mother with inhuman strength and endurance. The gender-specific nature of atrocities committed against women is also evident in testimony before the Truth and Reconciliation Commission in South Africa where women had to be urged to speak not only about the horrendous experiences of their husbands, sons and brothers, but also the harm done to themselves.

42. The Special Rapporteur is convinced of the need not only to pay more attention to women as victims of this violence but also to their potential as agents of preventive diplomacy, peacekeeping and peace-building. The

importance of fully involving women in designing rehabilitation policies in post-conflict situations cannot be overstated, nor can the need to increase, through measures of affirmative action if necessary, women's participation and leadership in decision-making and conflict prevention at both the national and international levels.

43. With those points in mind, the Special Rapporteur draws attention again to General Recommendation No. 23, adopted in 1997 by the Committee on the Elimination of Discrimination against Women. The Committee noted that "despite women's central role in sustaining the family and society and their contribution to development, they have been excluded from political life and the decision-making process, which nonetheless determine the pattern of their daily lives and the future of societies. Particularly in times of crisis, this exclusion has silenced women's voices and rendered invisible their contribution and experiences." The Special Rapporteur also underlines again the link between political participation and participation in the decision-making process and article 19 of the International Covenant on Civil and Political Rights.

44. The Special Rapporteur attaches considerable importance and priority to the question of the link between freedom of opinion and expression and the elimination of discrimination and violence against women. He urges States, United Nations organ and bodies, human rights NGOs and organizations working with and/or on behalf of women to provide him with information on, for example, individual cases, general situations and/or legal impediments to women's full enjoyment of the rights to freedom of opinion and expression and the right to seek, receive and impart information. In this regard, the Special Rapporteur wishes to refer to the annex to the present report which provides guidelines on how to bring information to the Special Rapporteur in the framework of his mandate.

IV. COUNTRY SITUATIONS

45. The Special Rapporteur in this section reports on the communications sent out and replies received during 1998. This, however, in no way implies that all cases of earlier communications have been closed to the satisfaction of the Special Rapporteur, as in a number of cases, he has not received replies from the Governments concerned. He refers to his earlier reports for cases previously examined.

46. The Special Rapporteur would like to encourage Governments to continue their cooperation with the mandate by providing information on the cases in question. He wishes to reiterate that good cooperation is essential in that it opens the possibility for the Special Rapporteur to engage in a dialogue aimed at addressing the concerns as regards respect for freedom of opinion and expression. The opportunity for dialogue is even greater during country missions, and the Special Rapporteur wishes to express his hope for the continued cooperation of Governments in this regard.

Algeria

47. By letter dated 26 January 1998, the Government of Algeria conveyed information to the Special Rapporteur regarding the case of Omar Belhouchet

which was mentioned in the report of last year (E/CN.4/1998/40). With regard to the legal process, the Government noted that Omar Belhouchet, Director of the French-language daily El-Watan, was charged with flagrant insult to administrative authorities and defamation. On 10 April 1996 he was first sentenced to one year's imprisonment and to a fine of DA 500, which was then cancelled by a decision of a court in Algiers on 5 November 1997. The Government emphasized that Mr. Belhouchet had always appeared freely before the court and, having appealed and the recourse having suspensive effect, he could travel, even to foreign countries.

48. The Special Rapporteur thanks the Government of Algeria for its reply and would appreciate being kept informed about the result of the appeal of Omar Belhouchet. Furthermore, the Special Rapporteur refers again to his previous reports with regard to the killing of journalists and would like to receive information on the progress made in the investigation of these cases and the prosecution of those responsible.

Argentina

49. On 27 May 1998, the Special Rapporteur transmitted an allegation to the Government of concerning the constant intimidation by certain sectors of the police against journalists and members of the Unión de Trabajadores de Prensa de Buenos Aires (UTPBA). One member of UTPBA, Ms. A.M. Careaga, was reported to have been followed and photographed allegedly for her testimony in a case that concerned the disappearance of Spanish citizens during Argentina's military Government. According to the information received by the Special Rapporteur, the Government also sought to restrict the freedom of the press by attempting to introduce legislation which would impose disproportionately heavy penalties for slander and defamation. Furthermore, the Special Rapporteur received information concerning the assassination of J.L. Cabezas and M. Bonnino, two journalists and members of UTPBA, in January 1997 and November 1993, respectively. It is alleged that the Government has not carried out a thorough investigation into the assassination of Mr. Bonnino and that no results of any investigation have been made known. The investigation of Mr. Bonnino's death reportedly remains pending before the local court of first instance, and the case of Mr. Cabezas' murder is supposedly pending before a district court in Buenos Aires.

50. In the same letter the Special Rapporteur requested an invitation to carry out a country visit to Argentina in the course of 1998, as such a visit would enable him to better understand the situation relating to the freedom of opinion and expression in the country and to make a more dispassionate and realistic assessment of the situation.

51. The Special Rapporteur regrets that at the time of the finalization of the present report no reply had been received from the Government on the concerns raised and hopes that the Government will respond soon.

Azerbaijan

52. On 25 September 1998, the Special Rapporteur sent an urgent appeal to the Government of Azerbaijan jointly with the Special Rapporteur on torture on the alleged beating and harassment of more than 30 journalists in Baku

on 12 September 1998. According to the information received by the Special Rapporteur, the following journalists, including some members of the Labour Union of Azerbaijani Journalists, were beaten and some had their equipment confiscated by the police as they were covering a banned opposition rally: Azer Sariyev, correspondent for Express newspaper; Faiq Qazanfaroglu, correspondent for Millet newspaper; Mahammad Ersoy, deputy editor of Yurd yeri newspaper; Ibrahim Niyazly, correspondent for Democratic Azerbaijan newspaper; Anar Mammadli, correspondent for Azerbaijan Gencleri newspaper; Movsun Mammadov, correspondent for Monitor magazine; Xaliq Mammadov, Haji Zamin and Khalig Bakhadyr, of Azadlig newspaper; Elmir Suleymanov, cameraman for ANS TV; Ilqar Shahmaroglu, Nebi Rustamov and Taghi Yusifov, correspondents for Qanun magazine; Tahir Pasha and Natiq Javadli, correspondents for Olaylar newspaper; Tapdiq Farhadoglu, correspondent for the Turan agency; Sarvan Rizvanov, editor of Azadlig newspaper; Movlud Javadov, Sebuhi Mammadli and Zamina Aliqizi, correspondents for Yeni Musavat newspaper; Kamil Taghisoy, head of department of Yeni Musavat; Shahin Jafarli and Azer Qarachanli, editors of Yeni Musavat; Allahverdi Donmez, correspondent for Tezadlar newspaper; Mehseti Sherif, correspondent for Rezonans newspaper; Talekh Zafarli and Rasul Mursaqulov, correspondents for Chag newspaper; Tunzale Rafiqqizi, correspondent for Ana Veten newspaper; Rey Kerimoglu, correspondent for Sharq newspaper; Azer Rashidoglu, correspondent for Ayna newspaper; Ajdar, cameraman for Azadlig newspaper; Lachin Semra, correspondent for Muxalifet newspaper; Eldaniz Badalov, cameraman for Bu gun newspaper; Tahir Mammadov, deputy editor-in-chief of Chag; Elman Maliyev, correspondent for Hurriyyet newspaper; and Shahbaz Xuduoglu, editor of Qanun.

53. It is also reported that police attempted to break into the office building of several opposition and independent news outlets, among them the Azadlig and Chag newspapers and the Turan agency. It is alleged that two of the above-mentioned journalists, Tahir Mammadov and Shahbaz Xuduoglu, were arrested by the police, along with Elman Maliyev, who was taken to the police station. The Special Rapporteur specifically requested the Government of Azerbaijan to provide pertinent information on the court, agency or other competent body which was, or is, responsible for investigation of the allegations and the prosecution of those responsible.

54. By letter dated 3 December 1998, the Government of Azerbaijan indicated that on 12 September 1998 a group of about 300 persons used force against police officers on duty in an area close to a stadium where an authorized opposition rally was supposed to take place. These unlawful actions are said by the Government to have seriously disrupted public order and were therefore the object of criminal proceedings by the Office of the Procurator-General of Baku. Thirty nine persons were subsequently charged. Only one of them complained of physical and psychological pressures. The Government further confirmed that the Procurator-General received in mid-September letters of complaint from the Turan news agency and the Labour Union of Azerbaijani Journalists, but that no individual submitted any official complaint, although they had been invited to do so. The Government stated that most of the persons mentioned in the Special Rapporteurs' letter either did not complain, or indicated to the Office of the Procurator-General that the losses they had suffered during the clash with the police were negligible. However, the investigators are said to plan to verify whether the rights of other journalists mentioned have been violated. Finally, the Government indicated

that the Procurator-General has communicated to the Ministry of Internal Affairs his views on the need for urgent action to prevent the violation of the journalists' rights.

55. The Special Rapporteur thanks the Government of Azerbaijan for the detailed reply provided and the willingness shown to cooperate with the mandate.

Chad

56. On 18 June 1998, the Special Rapporteur sent an allegation to the Government of Chad relating to the case of Ngarléjy Yorongar, a member of Parliament whose parliamentary immunity was lifted on 26 May 1998 before he was reportedly arrested on 2 June 1998 and placed in custody awaiting trial. According to the information received, Ngarléjy Yorongar had criticized the construction plan for a pipeline and allegedly implicated the head of State and the President of the Parliament in this project.

57. The Government of Chad provided the Special Rapporteur with a reply on 29 July 1998 in which it confirmed that the parliamentary immunity of Ngarléjy Yorongar was lifted before any criminal action was taken. According to the Government, Mr. Yorongar had received a fair trial. The Government also contested information according to which Mr. Yorongar was arrested several times and harrassed by the police. Finally, the Government considered that the case to be simply one of defamation, despite the lack of cooperation from the accused and the behaviour of his defence lawyers.

58. The Special Rapporteur thanks the Government of Chad for the reply provided and the willingness shown to cooperate with the mandate. The Special Rapporteur would appreciate being informed on further developments in this case.

China

59. By letter dated 24 February 1998, the Government of China replied to the Special Rapporteur's letter of 12 November 1997 (see E/CN.4/1998/40, para. 76) in which he communicated to the Government his concerns for the following individuals whose right to freedom of opinion and expression had been subjected to arbitrary interference: Wang Dan, Wang Ming, Gao Yu, Liu Nianchun, Li Hai, Yao Zhenxiang, Yao Zhenxian, Fu Guoyong, Chen Longde, and Wang Donghai.

60. The Government informed the Special Rapporteur that Wang Dan was found guilty in 1991 of advocating the overthrow of the Government, sentenced to four years in prison and stripped of his political rights for one year. On 17 February 1993, he was paroled but rearrested on 3 October 1996 for having colluded with foreign organizations and posing a threat to national security while he was stripped of his political rights. Wang Dan was sentenced to 11 years in prison for having conspired to overthrow the Chinese State and the socialist system. The Government informed the Special Rapporteur that Wang Dan was in good health, held at the Jinshou prison in Liaoning Province, and permitted to meet with his family frequently.

61. In regard to Wang Ming, the Government stated that he, along with others, had provoked disturbances and disrupted public order in Guizhou, Sichuan, and elsewhere. Hence, on 6 December 1996, Wang Ming was assigned to three years' re-education through labour. The Government informed the Special Rapporteur that Gao Yu was sentenced on 10 November 1994 to six years in prison for allegedly having disclosed State secrets. She is being held at the Yanqing Prison in Beijing and is reported to be in good health after her high blood pressure was treated with medication.

62. Concerning Liu Nianchun, the Government informed the Special Rapporteur that he was sentenced in 1991 to three years in prison for counter-revolutionary activities. Since 1993, it is alleged that Liu Nianchun and others had planned to set up an illegal organization, provoked and disrupted public order by engaging in unlawful activities in Beijing, Shanghai and elsewhere. On 14 May 1996, Liu Nianchun was assigned to three years of re-education. The Government wished to inform the Special Rapporteur that the allegation that Liu Nianchun had received no medical attention was erroneous, as he was sent to two different hospitals four times for examination in August 1996 and, at the family's request, to a third hospital on 26 February 1997, which confirmed no visible medical problems.

63. Li Hai, as reported by the Government, was sentenced on 18 May 1997 to nine years in prison for having gathered State secrets. He was also stripped of his political rights for two years and is now serving his sentence in a Beijing prison. In July 1996, the brothers Yao Zhenxiang and Yao Zhenxian, were assigned to three and two years of re-education through labour, respectively, for having duplicated and broadcast obscene materials. The two brothers are in good health since they receive appropriate medical care.

64. In regard to Fu Guoyong, the Government informed the Special Rapporteur that he was assigned to re-education through labour in 1990 for provoking a disturbance, but he remained unreformed and allegedly continued to provoke disturbances and disrupt public order. On 5 November 1996, he was assigned to three years in re-education.

65. Wang Donghai, who was first sentenced in July 1989 to two years in prison for counter-revolutionary propaganda and provocation, was assigned to a year at a re-education facility on 29 May 1996 for continuing to engage in activities that endangered State security after his first release. Wang Donghai completed his assignment on 28 May 1997, and the public security authorities have never placed him under house arrest.

66. Chen Longde was sentenced in September 1989 to three years in prison for counter-revolutionary propaganda and provocation. The Government stated that in May 1996, he, in conjunction with others, plotted and provoked a disturbance and disrupted public order, for which he was assigned to three years of re-education on 26 July 1996. The Government asserted that torture and beatings do not take place at the facility.

67. Furthermore, the Government noted that Chinese citizens have the right under its Constitution and other laws to freedom of opinion, the press, assembly, association, the freedom to march and to hold demonstrations. However, its Constitution also states that citizens must accept the duties

imposed by the Constitution and laws and must not harm the interests of the State, society, and the collective or the legitimate rights of other citizens. Furthermore, no one can be punished simply for holding dissident political views or exercising the right to freedom of opinion. The individuals named above were punished under the law because they committed crimes.

68. The Special Rapporteur thanks the Government of China for the detailed reply provided and the willingness that it has indicated to cooperate with the mandate. Above all, the Special Rapporteur welcomes the release of Wang Dan from prison on 20 April 1998 for medical reasons, and his transfer to the United States. He would, however, appreciate if the Government could provide him with further information on the case.

Democratic Republic of the Congo

69. On 28 October 1998, the Special Rapporteur sent an urgent appeal to the Government in a joint initiative with the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo. Concern was expressed with regard to the fate of three journalists: Paulin Tusumba Nkazi-a-Kanda, editor of the newspaper Le Peuple, Jean-Marie Kanku and Professeur Muamba Kayembe or "Ali Kamba", both from the newspaper L'alerte.

70. According to the information received, the first of the above-mentioned journalists was arrested on 16 October 1998 and is currently detained in the court prison for having published an article on the August 1998 rebellion against the ruling Government. The two other journalists were reportedly arrested on 19 October 1998 for having published an article which was said to defame the Minister for Home Affairs.

71. The Special Rapporteur regrets that no reply has yet been received from the Government on the cases in question and hopes for an early response.

Egypt

72. On 9 September 1998, the Special Rapporteur transmitted an allegation to the Government of Egypt concerning the confiscation of the first two issues and prohibition of further distribution of *Alf Lela*, a cultural journal based in Cyprus, by the Egyptian authorities in August 1998. According to the information received by the Special Rapporteur, as a foreign publication in Egypt, *Alf Lela* is subject to the authority of the Censorship Department of the Ministry of Information. It is reported that the reason given by the authorities for the confiscation of *Alf Lela's* 12 August 1998 issue was that it had "contained articles of a political nature". No reason was supposedly given for the banning of the second issue on 19 August 1998.

73. By letter of 4 December 1998, the Special Rapporteur transmitted an urgent appeal to the Government of Egypt, jointly with the Special Rapporteur on torture, the Working Group on Arbitrary Detention and the Special Rapporteur on the independence on judges and lawyers, to express their concern over the detention of Mr. Hafez Abu Se'da, a lawyer and the Secretary-General of the Egyptian Organization for Human Rights (EOHR). According to the information received, the Egyptian Higher State Security Prosecution ordered the detention of Mr. Hafez Abu Se'da on 1 December 1998

for a period of 15 days after he appeared as a witness in a court hearing about EOHR's financing. It has been reported that Mr. Hafez Abu Se'da faces charges of: (i) "accepting funds from a foreign country with the aim of fulfilling acts that would harm Egypt"; (ii) "disseminating false information abroad that would harm national interests"; and (iii) "receiving donations without obtaining permission from the competent authorities". It is claimed that the current whereabouts of Mr. Hafez Abu Se'da are unknown, and neither his lawyers nor his family have apparently been informed of his whereabouts or been allowed to visit him.

74. The Special Rapporteur wishes to point out that the reply to be provided by the Government in this case will be published in next year's report.

Georgia

75. On 2 October 1998 the Special Rapporteur sent a joint allegation to the Government of Georgia with the Special Rapporteur on torture. Concern was expressed in regard to two Georgian journalists, Constantine (Kote) Vardzelashvili and Giorgi (Gogi) Kavtaradze, from the non-governmental Liberty Institute in Tbilisi, who were beaten and threatened by the police on 21 September 1998 after having tried to obtain information from the head of the Special Police Unit, Temur Mgebrishvili, about the alleged use of force by the police against a crowd of people.

76. On 26 November 1998 the Government of Georgia sent a preliminary reply in which it informed the Special Rapporteur that the two journalists were taken by police to the police station after they offered resistance to the police forces who were carrying out law enforcement measures on Agmashenebeli Avenue. Mr. Vardzelashvili and Mr. Kavtaradze were released the same evening. After a complaint by the two journalists that the police had physically abused them, an investigation is being monitored by the Prosecutor General of Georgia. The Government of Georgia added that it would send more complete information on the results of the investigation.

77. The Special Rapporteur wishes to thank the Government of Georgia for its prompt reply and welcomes the fact that an investigation has been ordered. The Special Rapporteur is looking forward to receiving additional information on the results of this investigation.

Hungary

78. From 9 to 13 November 1998, the Special Rapporteur undertook a visit to Hungary, on which he has reported separately to the Commission at its present session (E/CN.4/1999/64/Add.2).

Iran (Islamic Republic of)

79. By letter of 30 October 1998, the Special Rapporteur transmitted information to the Government of Iran with regard to the closing down of the newspapers *Rah-e-No* and *Tarana* on 17 September 1998. The two newspapers were said to have published criticism of Iran's hard-line leadership and its position on Afghanistan. In addition, a Press Court in Tehran reportedly revoked on 29 September 1998 the printing licence for the monthly magazine

Jameh-Salem for having allegedly defamed the late spiritual leader Ayatollah Khomeiny. *Jameh-Salem's* director, Siavoch Gouran, was reportedly given a one-year suspended jail sentence and ordered to pay a fine equivalent to US$ 1,000. It is further reported that on 6 October 1998 a Press Court also suspended the publication of the weekly magazines *Asre-Ma* for six months and *Sobh* for four months. *Asre-Ma*'s director, Mohammad Salamati, was allegedly sentenced to a fine equivalent to US$ 1,000 for having published "insulting and deceitful" articles. *Sobh's* director, Mehdi Nassirj, was also said to have been fined the same amount.

80. Furthermore, the Special Rapporteur raised his concerns for the following three journalists from the daily *Tous*, who were allegedly arrested after the closing down of the newspaper on 16 September 1998: editor Mashallah Shamsolva'ezin, publishing director Hamid Reza Jalaipour, and sub-editor Mohammad Javadi Hessar. According to the information received by the Special Rapporteur, the three journalists are awaiting trial by the Revolutionary Court, along with their colleague, *Tous* columnist Ibrahim Nabavi, who was arrested on 18 September 1998. Although it is reported that Hama Reza Jalaipour was released on 13 October 1998 and the others around 2 October 1998, the four journalists are still charged with having carried out subversive activities against State security. It has also been reported that some of the four journalists may be charged with the offence *moharebe ba khoda*, or enmity with God, which supposedly carries the death penalty.

81. The Special Rapporteur anxiously awaits a reply from the Government of the Islamic Republic of Iran on the cases in question and hopes for an early response.

Japan

82. In a joint initiative with the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur sent on 13 July 1998 an allegation to the Government of Japan concerning over 10,000 web pages, bulletin boards and news-servers in Japan which allegedly distribute images of child pornography over the Internet. According to the information received, images of children, sometimes as young as eight or nine years old, depicting their rape, torture, and even murder, can be downloaded easily by anyone with basic knowledge of the Internet. The source reports that although this is a global phenomenon, the proliferation of such Websites from Japanese news-servers is said to be particularly marked.

83. The Special Rapporteur regrets that at the time of the finalization of the present report, no reply had been received from the Government of Japan on the concerns raised. The Special Rapporteur would like to refer to article 34 of the Convention on the Rights of the Child which stipulates States parties shall protect the child from all forms of sexual exploitation and abuse, and urges the Government of Japan to take all appropriate measures to guarantee the physical and psychological integrity of all children who have access to the Internet, or whose images are portrayed thereon. Furthermore, the Special Rapporteur urges the Government to carry out an impartial and thorough investigation into the facts as described above and to identify those responsible.

Malaysia

84. From 20 to 24 October 1998, the Special Rapporteur undertook a visit to Malaysia, on which he has reported separately to the Commission at its present session (E/CN.4/1999/64/Add.1).

Mexico

85. On 13 February 1998, the Government of Mexico, responding to the Special Rapporteur's letter of 30 October 1997 (see E/CN.4/1998/40, para. 83), provided detailed information about the investigations carried out on the cases of René Solorio, Ernesto Madrid and Gerardo Segura, journalists at TV Azteca, who were abducted and tortured for several hours, presumably because of the revelations made of alleged abuses and misdeeds committed by law enforcement agents. More details have been also communicated by the Government about the cases of Daniel Lizárraga and David Vicenteno, journalists at La Reforma, who were kidnapped and assaulted. Further explanations were given for the killing of Abdel Jesus Bueno León, publisher and editor of 7 Días; questions raised about the deaths of Benjamin Flores González, working at La Prensa, and Victor Hernández Martínez, journalist for the weekly Como, were answered as well. According to the Mexican authorities, all of these cases are still under investigation or already in the prosecution stage.

86. As regards the abduction, assault and torture allegedly suffered by Mr. Solorio, Mr. Madrid and Mr. Segura, the Government of Mexico states that the ongoing investigation by the Attorney-General's Office has found some contradictions in several of the victims' accounts; they are not cooperating with the authorities in the investigation. The cases of Mr. Lizárraga and Mr. Vicenteno, allegedly object of abduction, assault and threats, are under investigation at the National Commission on Human Rights in an information-gathering stage. Mr. Hernández Martínez's death is also being investigated by the National Commission on Human Rights where the file is soon to be completed. As regards the murder of Mr. Bueno León, the Commission has started an investigation as it could be linked to the death of another journalist, Leoncio Pontor García. With respect to the case of Mr. Flores González's death, the judicial authorities have ordered the detention of five persons on charges of homicide and criminal association. They are in prison awaiting trial.

87. The Special Rapporteur thanks and takes note of the information provided by the Government of Mexico. He would like to be provided with additional information about the ongoing investigations and prosecution processes.

Nigeria

88. On 8 June 1998, the Special Rapporteur sent an urgent action to the Government of Nigeria jointly with the Special Rapporteur on the situation of human rights in Nigeria, the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers, relating to the case of Mr. Niran Malaolu. According to the information received, Mr. Malaolu, the editor of an independent daily newspaper (The Diet), was arrested on 28 December 1997 and sentenced to life imprisonment by a Special

Military Tribunal on 28 April 1998 for concealment of treason. Prior to his arraignment, Mr. Malaolu was denied access to a lawyer, a doctor and members of his family. Mr. Malaolu was allegedly punished for news stories published by his paper concerning an alleged coup plot involving Lieutenant General Oladipo Diya, as well as other military officers and civilians who also were convicted by the Tribunal and sentenced.

89. The Special Rapporteur regrets that no reply has been provided by the Government on this case and hopes to receive one soon.

Panama

90. By letter dated 30 June 1998, the Special Rapporteur transmitted information to the Government in regard to legal limitations on the right to freedom of expression and opinion, in particular article 33 of the Constitution, which enables State authorities to fine or arrest any person who offends or shows disrespect to them in the performance of their duties; articles 172, 173 and 173A of the Criminal Code, which impose penalties of fines or imprisonment for "slander and offence"; and Law 67 of 1978, which prohibits the exercise of the profession of journalism by individuals who do not possess an alleged "professional competence". The authorities are said to have used the above-mentioned legislation to prosecute and punish those who criticize the Government, such as in the case of journalist Gustavo Gorriti and Dr. Miguel Antonio Bernal, who was reportedly prosecuted for having implicated the national police in incidents which had occurred in Coiba Island penitentiary.

91. On 5 October 1998 the Government informed the Special Rapporteur that Panama's Criminal Code governs issues relating to calumny and insult in order to preserve the dignity and good name of the individual. Victims of false statements have recourse to the appropriate legal authority and can request an investigation and compensation for damages. The Government has set up a special commission to undertake an examination of the provision contained in article 173A of the Criminal Code and hopes to be able to promote national consensus on this issue.

92. The Government also informed the Special Rapporteur that Act No. 67 of 1978 is applicable to the communication media and contains provisions on the purely formal requirements which must be fulfilled before publication in regard to their owners and directors, and on other administrative mechanisms relating to violation of the law. In addition, the Government stated that there is full consensus on the advisability of repealing the provisions on sanctioning the media for the publication of false news, and the Government has drawn up a proposal which was included in the bill to decriminalize intentional calumny and insult by the communication media.

93. In the context of the nationalization of the media, the Government informed the Special Rapporteur that there are various contradictory opinions: some maintain that foreign journalists should be allowed to exercise their profession in Panama while others hold that the nationality requirement should be maintained.

94. On the proposed amendment to the Administrative Code, the Government informed the Special Rapporteur that the proposal does not interfere with individual or public freedoms because it is a purely administrative regulation of the freedom of assembly. It does not limit, diminish or eliminate the freedom of assembly, as this right is established in the Constitution. It is an attempt to punish those who, under cover of exercising their freedom of assembly, carry or use firearms or bombs, gas or other chemical materials which could cause harm to individuals or property. The bill would also punish those who hide their faces under hoods or masks, prevent public movement through deliberate closure of public access, and destroy properties.

95. In regard to the regulations on the professional ethics of university teaching staff, the Government informed the Special Rapporteur that the regulations were approved by the University General Council, the autonomous and highest body of the co-government of the University of Panama, without being subjected to the executive or any other institutional instruments of the State.

96. In the context of the criminal proceedings against Miguel A. Bernal for calumny and insult, the Government stated that the cause for the complaint was that he had accused the members of the National Police of being responsible for the murder of the inmates who had escaped from the penitentiary where they were being held.

97. The Special Rapporteur thanks the Government for its reply to the specific concerns raised in his allegation letter and for the other relevant documentation that the Government submitted. The Special Rapporteur would strongly recommend a more focused public debate in the country on the regulations referred to above which remain a cause of concern and constitute limits on freedom.

Republic of Korea

98. On 22 July 1998 the Special Rapporteur requested information from the Government about the cases of Ham Yun Shik and Son Chung Mu, charged with criminal defamation and imprisoned for their coverage of the 1997 presidential campaign. Ham Yun Shik, the publisher of One Way Magazine, who printed highly critical articles concerning presidential candidate Kim Dae Jung's background and political ideology, was taken to court by Kim Dae Jung's political party (National Congress for New Politics - NCNP) after his successful bid for the presidency. Mr. Ham was reportedly arrested on 28 February 1998 and is currently serving a jail term after a Seoul court sentenced him to one year in prison on 2 July 1998. Son Chung Mu, the publisher of Inside the World magazine, was arrested on 1 June 1998 allegedly for his magazine's coverage of the 1997 presidential campaign. He is being detained while awaiting his court appearance, which was scheduled for 20 July 1998.

99. On 10 August 1998 the Government of the Republic of Korea informed the Special Rapporteur that Ham Yun Shik's criminal history dated back to 1967 and that he was arrested after having issued and distributed 100,000 copies of his magazine in which he allegedly libelled Kim Dae Jung with reports on his birth, ideology, military service and health condition. As regards Son Chung Mu, the Government recalled that he had been found guilty of "defamation by

printed materials" for which he was sentenced to one year's imprisonment on 17 February 1994. The sentence was suspended for two years. Mr. Son wrote Kim Dae Jung, X File, a book in which he accused Mr. Kim of being a communist, allegedly on the basis of falsified documents. The NCNP lodged a complaint against Mr. Son which was filed for prosecution on 20 February 1998 without physical detention. The two cases are pending in Seoul District Court. The Government also recalled that within the context of the guaranteed rights of freedom of press and publication, Korean legislation provides reasonable limitations in order to ensure fair and just elections. The Public Office and Election Malpractice Prevention Act, enacted in 1994, provides sanctions in article 251 against those with the intention to libel candidates while article 309 of the Korean Criminal Code protects against crimes against reputation committed through printed materials.

100. The Special Rapporteur thanks the Government of Korea for its reply; however, further details would be most welcomed on the fate of the two above-mentioned persons awaiting trial.

Saudi Arabia

101. On 22 June 1998, the Special Rapporteur sent a joint urgent appeal to the Government of Saudi Arabia with the Working Group on Arbitrary Detention. Concern was expressed about the fate of a Dutch national, Wim den Hertog, and six Filipino citizens, Ariel Ordona, Angelito Sizon, Juanito Manalili, Ruben Aguirre, one unnamed man and Yolai Aguilar, who was said to be nine months pregnant. According to the information received by the Special Rapporteur, the above-mentioned individuals were arrested for the peaceful expression of their religious beliefs. Mr. den Hertog was reportedly detained on 13 June 1998, at his home and had not been heard of since his arrest. The Filipino citizens were said to have been arrested between 5 and 12 June 1998.

102. The Special Rapporteur regrets that no reply has yet been received from the Government of Saudi Arabia on the cases in question and hopes for an early response.

Sierra Leone

103. On 21 January 1998, the Special Rapporteur sent to the Government of Sierra Leone a joint urgent appeal with the Special Rapporteur on torture in regard to Sylvanus Kanyako, David Koroma, and Anthony Swaray, three journalists who were allegedly arrested without charge and detained in Freetown. According to the information received by the Special Rapporteur, the arrests on 10 January 1998 of Sylvanus Kanyako and David Koroma, both from the *Herald Guardian* newspaper, were related to the publication of an article which anticipated the arrest of a senior member of the Armed Forces Revolutionary Council. Anthony Swaray, a freelance journalist, was reportedly arrested around 14 January 1998 because of his alleged links with an illegal radio station. While Sylvanus Kanyako was reportedly held at the Criminal Investigation Department (CID) headquarters in Freetown, his arms were said to have been secured tightly behind his back. David Koroma was allegedly ill-treated while in custody and was later admitted to hospital. Anthony Swaray was also allegedly beaten.

104. The Special Rapporteur regrets that at the time of the finalization of the present report, no reply had been received from the Government of Sierra Leone. The Special Rapporteur would like to urge the Government of Sierra Leone to take any steps which might be necessary in order to investigate these cases and to prosecute and impose appropriate sanctions on any persons guilty of torture and violating the freedom of opinion and expression, regardless of any rank, office or position they may hold, as well as to take effective measures to prevent the recurrence of such alleged acts and to compensate the victims or their relatives, in accordance with the relevant international standards.

Sri Lanka

105. On 18 June 1998, the Special Rapporteur transmitted an urgent appeal to the Government of Sri Lanka on the case of Iqbal Athas, a journalist who was allegedly the target of an abduction attempt on 12 February 1998. The Special Rapporteur was informed that Iqbal Athas was being subjected to continued harassment which is believed to be related to his investigations into corruption in the top echelons of the security forces as well as in connection with some of the military actions undertaken in the ongoing conflict between the security forces and the Liberation Tigers of Tamil Eelam. In his communication, the Special Rapporteur welcomed President Chandrika Bandaranaike Kumaratunga's order for the Criminal Investigation Department to conduct an investigation into this incident.

106. On 24 June 1998, the Special Rapporteur sent an urgent appeal to the Government of Sri Lanka concerning Lasantha Wickrematunge, an editor and journalist of an independent weekly openly critical of the Government, who reportedly was the target of an armed attack. According to the information transmitted to the Special Rapporteur, Lasantha Wickrematunge had received anonymous telephone threats and was attacked by an unidentified number of individuals who opened fire from a van outside his house after he and his family had returned home on the night of 17 June 1998. It was also alleged that he had been the target of an assault three years ago and that his house had been watched by persons in unmarked vehicles. The Special Rapporteur welcomed the fact that Mangala Samaraweera, the Minister of Post, Telecommunications, and Media, had condemned that attack and called for a thorough police investigation into the later incident.

107. On 29 April 1998, the Special Rapporteur requested the Government of Sri Lanka to extend an invitation to him to carry out an official visit to the country in the course of 1998.

108. Despite an acknowledgement sent by the Government on 4 May 1998, no further reply has been provided to the Special Rapporteur, in particular with regard to the above-mentioned cases.

Sudan

109. On 28 May 1998, the Special Rapporteur sent a letter to the Government of the Sudan proposing that he visit the country in late summer or early autumn 1998, following an invitation the Government had extended to him in 1996.

110. The Government of the Sudan replied by letter dated 14 September 1998 and suggested that the Special Rapporteur visit the Sudan during September 1998. Unfortunately, previous commitments forced a delay in the visit which is now proposed for May or June 1999, as the Special Rapporteur suggested in his letter dated 6 October 1998 to the Government of the Sudan.

Tunisia

111. On 29 April 1998 the Special Rapporteur sent a letter to the Government reminding it that he had requested, by letter dated 4 December 1997, an invitation to visit the country. He emphasizes that this visit should consolidate the cooperation between Tunisia and the Commission on Human Rights.

Turkey

112. On 10 June 1998, the Special Rapporteur sent a joint urgent appeal with the Working Group on Arbitrary Detention to the Government of Turkey on the case of Esber Yagmurdereli, a journalist and lawyer. According to the information received by the Special Rapporteur, Esber Yagmurdereli was arrested on 1 June 1998 after his release in November 1997 on health grounds. In 1991, Mr. Yagmurdereli had supposedly been partially amnestied for a 23-year prison term he had been serving since 1978. With the new arrest and imprisonment, it is alleged that he would have to serve the remaining years of the first sentence in addition to the 10 months for his new conviction.

113. By letter dated 23 June 1998, the Government of Turkey stated that Mr. Yagmurdereli, who was sentenced to life imprisonment, first had been released under a conditional amnesty on 1 August 1991. According to the Government, Mr. Yagmurdereli broke the conditions of his amnesty a month after his release, on 8 September 1991, when he contravened article 8 of the Anti-Terror Law, which deals with incitement to violence against the State through propaganda. He was then sentenced to 10 months' imprisonment on 28 May 1997 by the State Security Court and taken to prison on 20 October 1997 after his appeal was rejected by the Court. He was released on 9 November 1997 because of his poor health, which did not represent an amnesty. Mr. Yagmurdereli then rejected the required medical examination at the Forensic Science Institute. The 3d Specialized Board of the Forensic Science Institute, therefore, decided that suspension of the execution of the imprisonment sentence was not required. Consequently, the Chief Prosecutor decided to remove the suspension on the execution of the verdict of Mr. Yagmurdereli, in accordance with article 399/1 of the Turkish Code of Criminal Procedure.

114. By letter dated 18 June 1998, the Special Rapporteur sent an allegation to the Government of Turkey on the case of Ragip Duran, a journalist and a founding member of the Turkish Human Rights Association. Ragip Duran started serving his 10-month prison term on 16 June 1998 after being convicted in October 1997 for his article in the now banned newspaper Ozgur Gündem, which analysed interviews he had had with Abdullah Ocalan, the leader of the Kurdistan Worker's Party (PKK).

115. The Government of Turkey responded by letter dated 2 July 1998, stating that Mr. Duran had been lawfully convicted, in conformity with article 7/12 of the Anti-Terror Law, No. 3713, for having misused his freedom of expression to propagate an illegal terrorist organization and its leader. The Government of Turkey added that Mr. Ragip Duran was not convicted for his interviews with the leader of the PKK, which were published on 12 April 1994, as he was acquitted of that suit filed against him. The Government emphasized that Mr. Duran's conviction was related to his praises of an illegal terrorist organization and its leader, which appeared in the article "Apo 91 Ocalan 94".

116. The Special Rapporteur would like to thank the Government of Turkey for its willingness to cooperate and for the information provided. However, the Special Rapporteur remains concerned about the removal of the suspension of the imprisonment sentence of Esber Yagmurdereli, as well as about his health.

Uzbekistan

117. On 16 September 1998, the Special Rapporteur sent an allegation to the Government of Uzbekistan concerning Shadi Mardiev, a reporter for the State-run Samarkand radio station and well-known writer for the journal *Mushtum*, who was arrested on 15 November 1997 and charged for his broadcast on 19 June 1997, in which he satirized the reportedly corrupt practices of Talat Abdulkhalikzada, the Samarkand deputy prosecutor. On 11 June 1998, Mr. Mardiev was reportedly sentenced to 11 years in prison for defamation and extortion. The Special Rapporteur was also informed that Mr. Mardiev had suffered two brain haemorrhages while he was in solitary confinement and awaiting the result of his appeal. On 3 August 1998, the Supreme Court confirmed Mr. Mardiev's 11-year sentence.

118. The Special Rapporteur regrets that at the time of the finalization of the present report, no reply had been received from the Government of Uzbekistan; he expects a response soon.

Viet Nam

119. On 25 May 1998 the Special Rapporteur transmitted an urgent appeal to the Government of Viet Nam in regard to Prof. Doan Viet Hoat, who is detained at Than Cam prison, inter alia for publication of the newsletter Dien Dan Tu Do (Freedom Forum). He was first sentenced in late March 1993 to 20 years of hard labour for his involvement with the newsletter; the sentence was reduced to 15 years on appeal. It was alleged that in addition to his poor health, Prof. Doan's family was denied access to him.

120. The Special Rapporteur regrets not having received any reply from the Government of Viet Nam. He would highly appreciate if the Government could provide him with precise details on the legislation applied in, and the legal basis for, the detention of Prof. Doan Viet Hoat.

Yugoslavia

121. On 15 October 1998, the Special Rapporteur sent an urgent appeal to the Government of Yugoslavia concerning a decree Issued by Serbian authorities on 8 October 1998, which prohibits local media from "retransmitting foreign media

programmes which threaten the interests of our country, incite fear, panic and defeatism or present a negative image of citizens' ability to defend the integrity of Serbia and Yugoslavia". It was alleged that this decree has been used by the authorities to restrict the retransmission of foreign radio programmes by independent media and also to impede the reporting of foreign and Yugoslav correspondents from Kosovo.

122. After the decree was issued, officials from the Yugoslav Telecommunications Ministry reportedly closed down the independent Radio Senta in Vojvodina on 9 October 1998 and Radio Index in Belgrade on 10 October 1998. On 12 October 1998, the independent Belgrade daily *Danas* allegedly received a warning notice and was served a banning order a day later by the Serbian Information Ministry. Another independent Belgrade daily, *Dnevni Telegraf*, also was said to have been closed down by the Information Ministry and the police on 13 October 1998. Both newspapers have reportedly been accused of breaching the above-mentioned decree. A third independent daily, *Nasa Borba*, also allegedly received a warning notice from the Information Ministry on 12 October 1998, for its reporting on Kosovo. In his communication to the Government, the Special Rapporteur expressed his great concern for the independent media and the physical integrity of journalists, who had been reportedly threatened.

123. The Special Rapporteur regrets that at the time of the finalization of the present report, no reply had been received from the Government. He wishes to express his concern over the recent developments in the Federal Republic of Yugoslavia. He has furthermore been informed that a new Public Information Law has been adopted which reportedly falls short of international standards, in particular with regard to the right to receive or impart information, regardless of frontiers. The Special Rapporteur would be grateful to the Government if he could receive relevant information on this matter.

V. CONCLUSIONS AND RECOMMENDATIONS

124. The Special Rapporteur encourages all States that have not ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to do so. Furthermore, he again urges all Governments to scrutinize their domestic legal systems with a view to bringing them into line with international standards governing the right to freedom of opinion and expression. Particularly with regard to the issue of national security, the Special Rapporteur urges all Governments to review not only laws specifically intended to protect national security but also ordinary criminal laws which may be used to infringe the rights to freedom of opinion and expression and information.

125. As regards information, particularly information held by Governments, the Special Rapporteur strongly encourages States to take all necessary steps to ensure the full realization of the right to access to information. The Special Rapporteur proposes to undertake a comparative study of the different approaches taken in the various countries and regions in this regard.

126. As regards the impact of new information technology on the right to freedom of opinion and expression, the Special Rapporteur considers it of pre-eminent importance that they be considered in light of the same

international standards as other means of communication and that no measures be taken which would unduly restrict freedom of expression and information; in case of doubt, the decision should be in favour of free expression and flow of information. With regard to the Internet, the Special Rapporteur wishes to reiterate that on-line expression should be guided by international standards and be guaranteed the same protection as is awarded to other forms of expression.

127. In this context, he also recommends that all reasonable steps be taken to promote access to the Internet. For instance, Governments should promote an economic and regulatory environment which encourages the extension of telecommunication lines to rural and other previously under-serviced areas. Wherever possible, government information should be made available through the Internet.

128. Concerning the link between the right to freedom of opinion and expression and the rights of women, the Special Rapporteur expresses his great concern at the continuing silencing of women by various devices. He urges Governments to take all necessary steps to remove formal and cultural obstacles to the exercise by women of their right to freedom of expression, including to receive information, and, ultimately, to give effect to all their rights. In light of the importance of freedom of expression and how it relates to violence against women, the Special Rapporteur is of the view that a special effort should be made both to gather and to analyse more information along the lines described in the present report. The Special Rapporteur would like to reiterate his wish to be able to prepare a report jointly with the Special Rapporteur on violence against women, to be submitted to the Commission on Human Rights next year. In this regard, he invites submissions by Governments, intergovernmental organizations and specialized agencies, as well as non-governmental bodies.

Notes

1/ *Verbitsky v. Argentina*, 20 September 1994, Case No. 11.012, Report No. 22/94, 3 HRR 52; the Inter-American Commission on Human Rights.

2/ *Lingens v. Austria*, 8 July 1986, 8 EHRR 407, para. 42.

ANNEX

How to bring information before the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Overview

The mandate of the Special Rapporteur is concerned with the promotion and protection of the right to freedom of opinion and expression, including the right to seek, receive and impart information. In view of the complexity and multifaceted nature of this right, the Special Rapporteur views the mandate as not focusing only on individual cases and incidents or being confined only to the issue of freedom of the press or the media. The work of the Special Rapporteur, therefore, involves both action on individual cases and incidents as well as consideration of laws and practices relating to the rights to freedom of opinion and expression and to seek, receive and impart information.

Any individual, group, non-governmental organization, intergovernmental agency or Government with reliable knowledge of situations and cases in areas relating to the mandate are encouraged to bring the relevant information to the attention of the Special Rapporteur. The Special Rapporteur invites correspondents to provide information on problems within the scope of his mandate. He is particularly interested in receiving information on problems and violations related to:

(a) Detention of, discrimination against, or threats or use of violence and harassment, including persecution and intimidation, directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including professionals in the field of information;

(b) Activities of political opposition parties and trade union activists, whether a group or an individual;

(c) Actions against the media (print and broadcast) or impediments to their independent operation;

(d) Actions against publishers and performers in other media, including books, magazines, film and theatre and the studio arts;

(e) Activities of human rights defenders (e.g. lawyers, community activists);

(f) Women's human rights, within the context of obstacles - including laws and practices - which impede the right of women to express their views and be heard, participate in the decision-making process, have equal standing before the law, and seek and receive information on matters of particular relevance to them such as family planning and violence against women;

(g) Obstacles to access to information at the local, regional and national levels on projects and initiatives proposed by the Government to

advance the right to development and obstacles to participation in the decision-making process, as well as obstacles to access to information on other subjects such as environmental and health impact studies, national budgets, social spending, industrial development projects and trade policies.

The Special Rapporteur seeks to balance communications with Governments between those related to individual cases and incidents, which may be considered the symptoms, and those that relate to general patterns of violations - including the legal framework and its application as regards the rights to freedom of opinion and expression and to seek and receive information - which may be considered the root causes of violations.

Method

Upon receipt of *prima facie* credible and reliable information, the Special Rapporteur transmits the information to the Government concerned and requests it to provide him with comments and observations. Upon receipt of the replies, the Special Rapporteur establishes whether the information received can be considered as explaining to his satisfaction the circumstances of the case, the applicable laws and regulations and the reasons for the act or omission on the part of the State that provided the initial ground for an allegation of an impermissible infringement on the right to freedom of opinion and expression.

The Special Rapporteur has adopted an urgent action procedure for cases that are of a life-threatening nature or other situations where the particular circumstances of the incident require urgent attention.

APPENDIX

Guidelines for the submission of information to the Special Rapporteur

In order for the Special Rapporteur to be able to take action regarding a communication on a case or incident, the following information, as a minimum, must be received.

1. **Allegation regarding a person or persons:**

   As detailed a description of the alleged violation as possible, including date, location and circumstances of the event;

   Name, age, gender, ethnic background (if relevant), profession;

   Views, affiliations, past or present participation in political, social, ethnic or labour group/activity;

   Information on other specific activities relating to the alleged violation.

2. **Allegation regarding a medium of communication:**

   As detailed a description of the alleged infringement on the right as possible, including date, location and circumstances of the event;

   The nature of the medium affected (e.g. newspapers, independent radio); including circulation and frequency of publication or broadcasting, public performances, etc.;

   Political orientation of the medium (if relevant).

3. **Information regarding the alleged perpetrators:**

   Name, State affiliation (e.g. military, police) and reasons why they are considered responsible;

   For non-State actors, description of how they relate to the State (e.g. cooperation with or support by State security forces);

   If applicable, State encouragement or tolerance of activities of non-State actors, whether groups or individuals, including threats or use of violence and harassment against individuals exercising their right to freedom of opinion and expression, including the right to seek, receive and impart information.

4. **Information related to State actions:**

   If the incident involves restrictions on a medium (e.g. censorship, closure of a news organ, banning of a book, etc.); the identity of the authority involved (individual and/or ministry and/or department), the legal statute invoked, and steps taken to seek domestic remedy;

If the incident involves arrest of an individual or individuals, the identity of the authority involved (individual and/or ministry and/or department), the legal statute invoked, location of detention if known, information on provision of access to legal counsel and family members, steps taken to seek domestic remedy or clarification of person's situation and status;

If applicable, information on whether or not an investigation has taken place and, if so, by what ministry or department of the Government and the status of the investigation at the time of submission of the allegation, including whether or not the investigation has resulted in indictments.

5. **Information on the source of the communications:**

Name and full address;

Telephone and fax numbers and e-mail address (if possible);

Name, address, phone/fax numbers and e-mail address (if applicable) of person or organization submitting the allegation.

Note: In addition to the information requested above, the Special Rapporteur welcomes any additional comments or background notes that are considered relevant to the case or incident.

Follow-up

The Special Rapporteur attaches great importance to being kept informed of the current status of cases and thus very much welcomes updates of previously reported cases and information. This includes both negative and positive developments, including the release of persons detained for exercising their rights to freedom of opinion and expression and to seek, receive and impart information, or the adoption of new laws or policies or changes to existing ones that have a positive impact on the realization of the rights to freedom of opinion and expression and information.

Root causes

In order to carry out his work regarding the root causes of violations, which is of particular importance to the Special Rapporteur, he is very much interested in receiving information on and/or texts of draft laws relating to or affecting the rights to freedom of opinion and expression and to seek, receive and impart information. The Special Rapporteur is also interested in laws or government policies relating to electronic media, including the Internet, as well as the impact of the availability of new information technologies on the right to freedom of opinion and expression.

Communications

Where requested or considered necessary by the Special Rapporteur, information on the source of the allegations will be treated as confidential.

Any information falling within this description of the mandate of the Special Rapporteur should be sent to:

Special Rapporteur on the promotion and protection
of the right to freedom of opinion and expression
c/o Office of the High Commissioner for
Human Rights
United Nations Office at Geneva
1211 Geneva 10
Switzerland

Fax: +41 22 917 9003

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CIVIL AND POLITICAL RIGHTS INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Report of the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission on Human Rights resolution 1998/42

Report on the mission to Malaysia

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GE.98-05296 (E)

Introduction

1. This report has been prepared pursuant to resolution 1998/42 of the Commission on Human Rights. It presents and analyses information received by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, during his visit to Malaysia from 20 to 24 October 1998, as well as information received earlier from individuals and non-governmental organizations concerning allegations of violations of the right to freedom of opinion and expression.

2. By letter dated 27 May 1998 addressed to the Permanent Mission of Malaysia to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government for a visit to Malaysia. On 9 June 1998, the Government of Malaysia granted this request and the dates of the visit were confirmed by letter dated 9 September 1998.

3. The Special Rapporteur would like to express his gratitude for the cooperation extended to him by the Government of Malaysia in discharging his mandate.

4. The Special Rapporteur would also like to express his appreciation to the Resident Representative and staff of the United Nations Development Programme in Kuala Lumpur for their efficient organization of his visit.

5. The visit took place mainly in Kuala Lumpur, except for one day in Penang to attend the Commonwealth Editors' Forum and to meet with editors-in-chief of the main Malaysian newspapers. During his visit, the Special Rapporteur met with representatives of the Government, members of Parliament and the judiciary, as well as with representatives of non-governmental organizations active in the field of human rights, academics, press professionals, witnesses and victims of alleged violations and other members of civil society who were of interest to his mandate.

6. A list of persons with whom the Special Rapporteur met during the visit is contained in the annex to this report. The Special Rapporteur would like to take this opportunity to thank those he met for their generous efforts to assist him during his visit to Malaysia.

7. It should be noted that the Special Rapporteur had also requested to visit some of the detainees but could not do so due to the Government's extreme preoccupation with certain emerging situations that developed during the period of his visit. As it was short notice, the inability of the Government to respond positively may be understood.

I. BACKGROUND AND CONTEXT

8. Malaysia is a federation of 13 states with a parliamentary system of government based on periodic multiparty elections in which the ruling coalition of political parties - the Barisan Nasional - has held power since the independence of Malaysia in 1957.

9. In 1981 Dr. Mahathir Mohamad became the fourth Prime Minister of Malaysia since independence. He contributed to the economic growth of Malaysia by initiating a bold policy of heavy industrialization and a foreign policy asserting the interests of the undeveloped South versus those of the developed nations of the North. Dr. Mahathir became the spokesman for the "New Asia", upholding certain values by which the human rights and fundamental freedoms of individuals may be limited in due regard of the need to achieve or sustain what are essentially described as "Asian values". Malaysia is indeed among the countries which have argued, over the past few years, that the universal values, principles and rights set out in, inter alia, the Universal Declaration of Human Rights may be subject to cultural, historical, social, religious and/or political interpretation and constructs.

10. Like other countries in south-east Asia, Malaysia has been experiencing economic and environmental crises in 1997 which have had considerable implications. Some of the policies of the Mahathir Government were progressively called into question. The ruling coalition of parties in the Barisan Nasional continues to dominate the political arena, but a number of developments, particularly within the United Malay National Organization (UMNO - principal party of the ruling coalition) party, including the coming of age of a new generation of voters, tend to suggest that the traditional pattern of Malaysian politics is changing.

11. On 2 September 1998, Prime Minister Mahathir dropped Deputy Prime Minister Anwar Ibrahim from the Cabinet on alleged grounds of immoral and corrupt conduct. According to Mr. Anwar, his ouster was actually due to political differences and led to a series of demonstrations advocating political reforms. In September 1998, the Government detained Mr. Anwar and many of his supporters without trial under the Internal Security Act (ISA). Ibrahim Anwar and most of his associates were later released from ISA detention though Mr. Anwar remained imprisoned pending trial on criminal charges. These developments could have an important impact on UMNO party elections scheduled for 1999 and Malaysia's general elections, which must be held before April 2000.

12. As regards the information sector, the political crisis had implications for the quality and the objectivity of the information made public as well as for the Government's attitude towards the exercise of the right to freedom of opinion and expression, which became more restrictive. The role played by the media after the ouster of Anwar Ibrahim was very strongly criticized in certain quarters, resulting in a loss of credibility in the Malaysian media. Indeed, allegations made in affidavits which were not subjected to the judicial process were allegedly manipulated by the media and used against Mr. Anwar. Furthermore, and despite the plethora of national as well as foreign newspapers and private television and radio services, the current climate, described as a "climate of fear" by the civil society, inhibits independent or investigative journalism and results in self-censorship of issues that government authorities might consider sensitive.

II. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. Legal framework

13. In this section, the Special Rapporteur will briefly consider some aspects of the international and national legal framework governing the protection of the right to freedom of opinion and expression in Malaysia.

1. International obligations

14. Malaysia is a member of the United Nations and is thus bound to respect the rights and guarantees set out in the Universal Declaration of Human Rights, of which article 19 enshrines the right to freedom of opinion and expression.

15. Malaysia is a party to five international instruments: the Convention on the Rights of the Child (although with several reservations, in particular to article 13 which provides the right to freedom of expression of the child), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Nationality of Married Women, also with reservations.

16. Malaysia has not acceded to the International Covenant on Civil and Political Rights, nor to three other major conventions, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. National legislation

(a) The Constitution

17. Although article 10 of the Federal Constitution of Malaysia provides for the right to freedom of speech and expression, as well as the right to peaceful assembly "without arms", restrictions may be imposed by Parliament on these rights in the interests of the security of the Federation, friendly relations with other countries, public order or morality, in order to protect the privileges of members of Parliament or to provide against contempt of court, defamation or incitement to any offence.

18. Article 149 of the Constitution allows laws to be passed by Parliament that could restrict the right to freedom of speech as well as the rights to due process, freedom of assembly and association merely by stating, in the law itself, that "action has been taken or threatened by any substantial body of persons whether inside or outside the Federation to cause a substantial number of citizens to fear organized violence against persons and property". This can be done without a declaration of emergency. Today, article 149 provides the constitutional basis for two laws which provide for indefinite detention without trial - the Internal Security Act (ISA) 1960 and the Dangerous Drugs Act (DDA) 1985.

19. In addition, the Constitution's guarant of freedom of expression is qualified to the extent that it can be restricted by a simple act of Parliament.

(b) The law on the press and other mass media

20. Following the mass detentions under the ISA in 1987 and the judicial crisis of 1988 when three independent judges were removed, a number of existing laws were amended to increase the power of the executive.

21. The Printing Press and Publication Act 1984 proscribes in section 8A (1) the malicious publishing of false news defined as "not taking reasonable measures to verify the truth". Section 8A (1) of the Printing Press and Publications Act 1984 reads as follows: "Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding 20,000 ringgits or to both". Under the Act, the Government may ban the publication, import and circulation of any manuscript or publication deemed prejudicial to bilateral relations, public morality, security, public order, national interests, or which may alarm public opinion.

22. The Broadcasting Act of 1987 empowers the Minister of Information to control and monitor all radio and television broadcasts and to revoke the licence of any private company broadcasting material conflicting with "Malaysian values".

23. The Control of Imported Publications Act regulates foreign publications circulating in the country and gives the Government absolute discretion to ban any foreign publications deemed prejudicial to public order, morality or the security of Malaysia.

24. The 1967 Bernama Act - which established the Government-controlled news agency, Bernama - was amended in June 1990 in order to give Bernama exclusive rights to distribute news photographs, economic and financial data and other material. The amendment also allowed Bernama to cease being guided by the international conventions protecting freedom of information.

(c) Other legislation with a direct impact on the exercise of the right to freedom of opinion and expression

25. In recent years, a number of laws were amended including the Societies Act and the Police Act. These laws, along with the Sedition Act, could be used to suppress or repress expression and to curb peaceful assembly.

26. The Sedition Act 1948 prohibits public comment on issues defined as sensitive, such as citizenship rights for non-Malays, the special position of ethnic Malays in society, and certain aspects of religion. Section 4 (1b) of the Sedition Act reads as follows: "Any person who utters seditious words shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding 5,000 ringgits or imprisonment for a term not exceeding three years or to both, and for a subsequent offence, to imprisonment for a term not exceeding five years."

27. The Official Secrets Act was amended in 1986 to extend the classification of government documents and places the onus on journalists to prove that the information is not secret before it is published. This Act also provides for a minimum one-year custodial sentence on those found guilty of an offence under the Act.

28. The ISA allows for detention by the police for up to 60 days for interrogation of any person suspected of acting or being about to act in a manner prejudicial to the security of Malaysia or any part of the country; following the initial 60 days, further detention for up to two years may be authorized in writing by the Minister of Home Affairs. Moreover, the right of detainees to challenge the legality of their detention is limited to procedural matters.

B. Principal observations and concerns

1. The media

(a) The print media

29. The Special Rapporteur was informed that the Printing Presses and Publications Act 1984 contains important limitations on press freedom. First of all, domestic and foreign publications must apply annually to the Government for a licence. The Act was further amended in December 1987 to make the publication of "malicious news" a punishable offence, to expand the Government's power to ban or restrict publications and to prohibit court challenges to the Government's actions. According to some NGOs in Malaysia that produce licensed periodicals which have critical views on government policies, the requirement to renew their licences annually exerts pressure on these publications with respect to their content and obliges the editors-in-chief to remain close to the Government. Some examples of newspapers affected by this Act are The Star, Watan and Sin Chew Jit Poh, three daily local newspapers whose licences were reportedly suspended for several months during 1987 and 1988 following allegations of publications of ethnic issues.

30. In addition, the Special Rapporteur's attention was drawn to the fact that all major daily newspapers are very closely tied to companies connected to political parties in the ruling Government, which makes the Malaysian press dependent upon the Government. Consequently, the newspapers provide uncritical coverage of government officials and give only limited and selective coverage to political views of the opposition or political rivals. Editorial opinion frequently reflects government positions on domestic and international issues. However, on some issues there is sometimes criticism of government policies, such as some environmental and social programmes and the functioning of government services. In addition Chinese and Indian newspapers are generally more free in reporting and commenting on sensitive political and social issues.

31. It is also alleged that newspapers and editors who are close to the opposition parties or supporters of former Deputy Prime Minister Anwar can expect to be censored or subjected to pressure. In this regard, the Special Rapporteur was informed that before Mr. Anwar's arrest, two editors of

Malaysia's leading national Malay-language newspapers, Johan Jaafar from Utusan Malaysia and Ahmad Nazri Abdullah from Berita Harian, were pressured to resign by UMNO after having published reports and editorials highlighting views expressed by Ibrahim Anwar. According to the information received, the newspapers are perceived to have sided with Mr. Anwar in its coverage of intra-party struggles over political and economic reform.

32. The Special Rapporteur was furthermore informed that owing to political pressure, the Malaysian press practises self-censorship in order to follow the government line. This phenomenon was particularly visible during the financial crisis and the environmental problems in 1997. Whereas pertinent information on the two issues appeared in the press of neighbouring countries and in the international press, much of this information went unreported in Malaysia. Specific instructions were allegedly given not to report too much about these problems as it might adversely affect the country's image as well as tourism. Some of the justifications given by the Government to limit freedom of the press and which were conveyed to the Special Rapporteur during the visit were the necessity of avoiding any ethnic minority problems and, more generally, sensitive reports that would undermine "national peace and harmony".

33. The Special Rapporteur's attention was also drawn to the fact that the Government uses the Printing Presses and Publications Act to limit the freedom of expression of certain human rights activists. The Special Rapporteur met with Irene Fernandez, Director of Tenanganita, a women's non-governmental organization, who was arrested on 18 March 1996 and charged under section 8a of the Act with publishing "false news" in a report on alleged human rights violations in camps for detained migrants. Ms. Fernandez is free pending trial. As of the beginning of 1998, her trial was not yet completed and her case is reportedly the longest one in Malaysian history. If convicted, she faces up to three years' imprisonment or a fine, or both.

34. With regard to the foreign press, it was alleged that the Government has periodically chastised foreigners for exaggerating Malaysia's problems. According to certain sources, the Information Ministry announced on 9 August 1998 that it plans to impose new rules and restrictions that would allow the Government to monitor more closely the movements of foreign journalists in the country.

35. The Special Rapporteur had already been made aware of this problem since he had transmitted an allegation to the Government of Malaysia, in the framework of his mandate, on the deportation to the Philippines of Ms. Leah Palma Makabenta, Kuala Lumpur correspondent for Iter Press service and a national of the Philippines. Allegedly, her press pass was revoked on 1 April 1994 and she was ordered to leave the country within 48 hours because of an article she had written on the mistreatment of migrant labourers from neighbouring countries, which the Government said threatened national security. Reportedly, the Deputy Home Minister announced on 6 March 1994 that all foreign journalists who published what the Government considered to be negative reports about Malaysia should be banned from working in the country. The Special Rapporteur brought up this allegation again when he met with the Deputy Home Minister, since no reply from the Government had yet been received.

36. At the same time, the Special Rapporteur remains hopeful at the emerging openness that can be observed. On 3 May 1998, World Press Freedom Day was organized in Kuala Lumpur by the Asian Institute for Development Communication (AIDCOM) in collaboration with UNESCO, during which a panel discussion on press freedom was held between journalists and editors. Along the same lines, the Special Rapporteur welcomes the organization of the Commonwealth Editors Forum from 21 to 23 October 1998 in Penang which he had the opportunity to attend for a day. This event, which gathered editors from 35 different countries, shows a certain will to encourage debate on the press within Malaysian society.

(b) The broadcast media and the new technologies

37. Broadcasting is completely regulated by the 1988 Broadcasting Act which requires licensing for the operation of radio and television stations. The Act confers wide competence on the Ministry of Information. The Malaysian electronic media are either Government controlled or run by companies close to the ruling political parties. The content of private channels is closely monitored by the authorities. The Special Rapporteur's attention was drawn to the fact that the broadcast of CNN programmes is, according to some sources, delayed by one hour and that a voice-over summarizes the content of the journalist's presentation. However, the opinion has been expressed that the voice-over happens exceptionally rather than routinely. The Special Rapporteur is of the view that this practice could be assimilated to censorship and deserves examination.

38. The major newspapers and most of the broadcast media - RTM, TV3, Mega TV, MetroVision, NTV7 and Astro - are owned and controlled by Barisan parties or those closely associated with them. This economic control of the media is reinforced by a code of conduct for the attribution of terrestrial and satellite frequencies to which hertz and satellite connections are also bound. Thus, a programme is classified "18-PA" - only for persons over 18 years old - if it contains anti-cultural, political or religious elements.

39. It has been brought to the Special Rapporteur's attention that the various political parties have unequal access to the electronic media. UMNO, the ruling party, has full and free access to the media whereas the opposition parties have some difficulties of access. In a meeting with Lim Kit Siang, who has been the leader of the opposition for 20 years, the Special Rapporteur was informed that Mr. Lim has not had even one minute on television at any time during that period. However, he has a home page on the Internet which is accessible to everyone in Malaysia and outside the country.

40. As in the print media, self-censorship of the electronic media is also visible. In this regard, it was reported to the Special Rapporteur that local cable television companies frequently eliminate foreign press reports on Malaysia.

41. Furthermore, the Special Rapporteur was informed that broadcast of the Malaysian demonstrations on 21 September 1998 by several television stations, including the British Broadcasting Corporation, the Australian Broadcasting Corporation and TV New Zealand, was jammed for several hours. Three days later, the Minister of Information announced that foreign television

organizations would not be allowed to use the State broadcaster's facilities, which were meant for covering a specific event and were not meant for general use.

42. At the same time, the country is open to information from outside, owing mainly to the economic forces of globalization: on 11 June 1997, the Minister of Information announced that Bernama would no longer have a monopoly on the transmission of foreign news in the country, which it had enjoyed since 1990.

43. Regarding the new technology, and in particular the Internet, the number of Internet users is growing increasingly in Malaysia and the Malaysian authorities encourage citizens to equip themselves for the Internet. Although access to the Internet is widespread in the country, sensitive sites are nevertheless still closely controlled and intimidation of Internet users has been alleged and reported to the Special Rapporteur. In August 1998, two individuals were detained under the Internal Security Act for having allegedly used the Internet to start rumours that the 200,000 Indonesian migrant workers scheduled to be deported before the start of the Commonwealth Games were hoarding knives and machetes and intending to riot.

44. The Special Rapporteur is of the view that while the use of the Internet should be allowed fullest scope, it should not be abused to spread false news or for rumour-mongering. However, the Special Rapporteur wishes to encourage the use of the Internet, which shows that Malaysians are seeking alternative viewpoints using new modes of communication.

2. The legal restrictions on freedom of opinion and expression

45. During his visit, the Special Rapporteur noted with concern that Malaysia has a range of laws which can be used to control and limit the exercise of the right to freedom of opinion and expression (see paras. 21 and 26 to 28).

46. The ISA was passed more than 30 years ago, when there was an active Communist insurgency. The Special Rapporteur notes with concern that, under the Act, any police officer may arrest without a warrant and detain for up to 60 days any person suspected of acting in "any manner prejudicial to the security of Malaysia". Furthermore, these detainees can be held incommunicado, without access to legal representation or doctors, and often at risk of ill-treatment.

47. According to the Government, the object of the ISA is to control internal subversion threatening the security of the State. The Special Rapporteur was informed, however, that the Act in practice was not limited to its original purpose but was also being used to arrest and detain activists and leaders of a number of political parties as well as social and religious organizations. In early 1996, the Government indicated its intention to review the ISA; however, the use of the Act by the police has increased. It is time for the Act to be reviewed.

48. The Special Rapporteur notes with concern that during the weekend of 20 September 1998, more than 50 demonstrators were reported to have been

arrested and 17 were detained under the ISA between 20 and 29 September; 13 had been released by 10 October but 4 remain in detention. According to the Government, there are no more political detainees under the ISA.

49. Unable to visit Mr. Anwar in detention, the Special Rapporteur nevertheless had the opportunity to meet with one of his lawyers, Raja Aziz Adruce, as well as with Mr. Anwar's wife, Dr. Wan Aziza. She herself was investigated under the Sedition Act, and on 23 September 1998 she also was served an order under the ISA prohibiting her from holding gatherings at their home, speaking in public and carrying out any political activities.

50. The Sedition Act is another legal restriction on the right to freedom of expression and opinion. This legislation contains very broad definitions of so-called "seditious tendencies", which include a tendency to bring into hatred or contempt or to excite "disaffection" against any ruler, the Government or the administration of justice. This Act was used as part of the case against Lim Guang Eng, a member of Parliament and Deputy Secretary-General of the Democratic Action Party (see para. 54).

51. Furthermore, access to public information or information relating to public interest issues is severely restricted by the Official Secrets Act 1972, which was amended extensively in 1983. Under this Act, departmental heads have broad powers to classify documents as "secret" and therefore inaccessible to the public. As this classification is completely subjective and not subject to any independent scrutiny, the Special Rapporteur notes that the Official Secrets Act can also potentially restrict freedom of the press. Any public officer can declare any material an official secret - a certification which cannot be questioned in court. This Act also obliges journalists who have used classified documents to reveal their sources. It has been brought to the Special Rapporteur's attention that in 1995, two journalists working for the newspaper Harian Metro were arrested and detained for alleged contravention of the Act. However, they were not charged and were subsequently released.

52. In view of the above considerations, the Special Rapporteur wishes to recall that under international human rights law, the right to freedom of expression can be restricted only in the most serious cases of threats to national security. He refers in this regard to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, which offer some guidance on this matter (E/CN.4/1996/39, annex), as well as to paragraphs 46 to 48 of his last report (E/CN.4/1998/40).

3. The judiciary

53. The Malaysian Constitution provides for an independent judiciary and in the eyes of the Constitution it is the judiciary that remains the best custodian of fundamental freedoms. It is for the courts to ensure that restrictions are not such as to render these freedoms illusory.

54. The case of Lim Guan Eng was mentioned to the Special Rapporteur as an example of selective prosecution based on political motivations, as well as a violation of the right to freedom of expression. Member of Parliament and Deputy Secretary-General of the opposition, Mr. Lim Guan Eng went on trial in

January 1996 after publicly criticizing the judiciary and in particular the Government's handling of allegations of statutory rape against the former Chief Minister of Malacca. After having lost an appeal before the Federal Court in April 1998, Lim Guan Eng is now serving two concurrent 18-month prison terms for sedition and malicious publishing of false news.

55. The Special Rapporteur requested by letter dated 21 October 1998 to meet with Lim Guan Eng, but did not receive any reply. During a meeting with the Deputy Home Minister, the Special Rapporteur expressed his concern about Lim Guan Eng's case and drew attention to the fact that as a member of Parliament, he should be able to attend the Parliament's sessions. The Special Rapporteur also met with Lim Guan Eng's father, Lim Kit Siang, who provided him with updated information on his son.

56. During his visit, the Special Rapporteur met with Murray Hiebert, a Canadian correspondent for the Far Eastern Economic Review who was found guilty of contempt of court and sentenced to three months in jail on 4 September 1997. Since then, Mr. Hiebert has had to surrender his passport to the authorities and is not able to travel or to go back to his country to visit his family. The Special Rapporteur asked for the Government's special consideration in this case.

57. In addition, it was brought to the Special Rapporteur's attention that defamation laws have at times been used to stifle freedom of expression. The Special Rapporteur learned that in recent years civil suits have been brought alleging defamation and requesting damages of up to millions of ringgit. This is a phenomenon which appears to be having a very chilling effect on freedom of expression and needs to be curbed. In this regard, the Special Rapporteur is deeply concerned about the case of Dato' Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers, who faces four defamation suits (seeking damages totalling $108 million) brought by several prominent individuals and Malaysian corporations for a 1995 interview with the London-based magazine International Commercial Litigation, in which he commented on his investigations into allegations of corporate interference with the Malaysian judiciary. Since the Malaysian Government did not recognize the immunity granted to him by the United Nations Secretary-General in his capacity as Special Rapporteur, the case was referred to the International Court of Justice. The Special Rapporteur anxiously awaits the final judgement in the matter.

4. Restrictions on the right of assembly

58. In view of the nature of his mandate, the Special Rapporteur does not wish to address questions relating uniquely or mainly to freedom of assembly. Nevertheless, in view of the fact that the right to freedom of assembly is an intrinsic part of the right to freedom of expression, he would like to offer some observations on this matter.

59. The right to freedom of assembly is guaranteed by the Malaysian Constitution with certain restrictions "in the interest of security and public order". The Police Act 1967 requires a police permit 14 days before any public assembly is held. This Act was further amended in 1989

to allow the police to disperse large gatherings on private premises if they were of the opinion that there was a threat to public order, or a breach of the peace could occur.

60. Whereas spontaneous demonstrations occur periodically, albeit limited in scope and generally with the tacit consent of the police, public rallies as part of electoral campaigning have been banned by the Government since 1978. Opposition parties are therefore forced to apply for permits to hold small meetings and often complain that they are denied permits for such gatherings. The Special Rapporteur's attention was drawn to alleged actions by the police to cancel a public meeting organized by the opposition Democratic Action Party on 31 May 1998 and a meeting of political parties on 2 June, which were intended to discuss the administration of justice and a miscarriage of justice against a member of Parliament. The police asserted that both gatherings were a threat to national security.

61. Since the removal of Mr. Anwar, although police permits were often refused, several demonstrations took place during the month of September 1998 to support Mr. Anwar and his call for reform. In October 1998, public rallies became more frequent while remaining spontaneous and peaceful.

62. The Special Rapporteur is deeply concerned about the way the police sometimes dispersed the demonstrators who were peacefully expressing their opinion and their right of assembly. According to the information transmitted to the Special Rapporteur, at least 126 persons were arrested on 20 and 21 September 1998. Though most of them were later released on bail, they are still being charged with participating in an illegal assembly, which carries a maximum penalty of up to six months in prison.

63. In the course of a meeting with the leader of the opposition, Lim Kit Siang, the Special Rapporteur was informed that at the 17 October demonstration, 127 people were arrested and appeared in the magistrate's court charged with participating in an illegal gathering. During the Special Rapporteur's mission, a large rally was held on the occasion of the presentation of the 1999 budget by Prime Minister Mahathir on 23 October 1998. According to the information received, the crowd was dispersed and six people arrested, including a journalist working for an Australian news agency, for illegal assembly and obstructing the police from discharging their duties.

64. The Special Rapporteur wishes to express his concern over this unfortunate development. According to several NGOs, academics and political leaders, these recent demonstrations, which are without precedent, highlight the need for more democracy in the country.

III. CONCLUDING OBSERVATIONS

65. Freedom of opinion and expression is the basis of all freedoms upon which the edifice of democracy rests. No nation can progress unless freedom of speech is secured for every individual and protected by law. Malaysia of late has made great progress in the economic and social

fields. Nevertheless, steps should be taken to strengthen the protection of human rights, and in particular the right to freedom of opinion and expression.

66. The Special Rapporteur is concerned at the extent of the limitations on the right to freedom of opinion and expression in the national legislation of Malaysia. With regard to the use of laws to protect the security and the integrity of the State, the Special Rapporteur is compelled to conclude that certain wording in and the implementation of these laws, in particular the Internal Security Act, the Sedition Act and the Printing Presses and Publication Act, fail to offer adequate protection of the right to freedom of opinion and expression as provided for by applicable international human rights law, including article 19 of the Universal Declaration of Human Rights. The Special Rapporteur wishes to emphasize that only in highly exceptional cases can a nation's security be directly threatened by a person capable of and intending to cause actions to be taken to that end, in particular by advocating or inciting to the use of violence. In no instance may the exercise of the right to freedom of expression be punished on the mere ground that it might possibly jeopardize national security. It is for the State to establish what consequences would ensue from a specific action and why it would constitute a direct threat to national security.

67. Freedom of the media in Malaysia has been often hindered by exerting political and legal pressure on journalists, which has led to widespread self-censorship in their daily work. The Special Rapporteur considers the dependence of the mass media on the State through State ownership or economic control by the ruling party to be undesirable. The Special Rapporteur is particularly concerned at the limited access of opposition politicians to the electronic media. In this regard, the Special Rapporteur emphasizes that the most important functions of the media - to inform, investigate, expose abuse and educate - are of crucial importance to society, and can only be fulfilled by media that are free from unnecessary constraints.

68. The Special Rapporteur expresses his distress concerning the alleged obstacles to the free exercise of foreign media, in particular the prosecution of foreign journalists and governmental measures to restrict the broadcasting of foreign electronic media. The Special Rapporteur observes that the Malaysian public's effective exercise of their right to receive complete and reliable information should not be limited and that the population should not be prevented from having full access to a multitude of opinions and critical views.

69. Furthermore, the Special Rapporteur notes that the Malaysian public would like to see more transparency and accountability in its own media so that there is more spontaneity in reporting and analysing important issues. Additional efforts should be made, through adequate training of journalists, to be more balanced and objective in order to regain some credibility in the eyes of the public.

70. The Special Rapporteur wishes to express his view that freedom of expression would be enhanced if a more liberal view were taken with respect to demonstrations. Democracy, in fact, thrives on them.

71. With regard to the judicial system, the Special Rapporteur considers that the executive should not be permitted to use the judiciary in such a manner that would be seen by the people as an attempt to restrict their rights. The impartiality of the judiciary should not be called into question.

IV. RECOMMENDATIONS

72. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations to the Government for its consideration. In view of the open and constructive exchanges of views that took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

73. The Government is strongly encouraged to consider taking further steps to fully guarantee the protection of the right to freedom of opinion and expression. These steps should include the repeal of the Internal Security Act and the consideration of other means, in accordance with international standards, to protect its national security. It should furthermore include amendments to some of the current national legislation, in particular the Printing Presses and Publication Act, the Sedition Act and the Official Secrets Act, to facilitate the exercise of the right to freedom of opinion and expression in a more transparent and judicious manner.

74. It is recommended that the Government review cases of persons who are being held for having exercised their right to freedom of opinion and expression with a view to releasing them. The cases of all persons who have been tried in court and convicted in application of laws or regulations incompatible with the protection of the right to freedom of opinion and expression, as affirmed in the Universal Declaration on Human Rights, should also be reviewed.

75. The Special Rapporteur urges the Government of Malaysia to repeal the regulations on annual licensing of newspapers in order to ensure that any registration requirements serve an administrative purpose only and are not used to impose restrictions on the media outside the scope of article 19 of the Universal Declaration on Human Rights.

76. The Special Rapporteur strongly encourages the Government to take all necessary steps to ensure the independence of the media, including safeguards against any interference by political interests. The establishment of an independent media council could be a first step. Initiatives on the part of media professionals to establish independent and voluntary professional associations should also be encouraged, in particular with regard to developing methods and systems of voluntary

self-regulation such as codes of ethics for the profession, training programmes which address the rights and responsibilities of the media and the Government, as well as monitoring the implementation of the right to freedom of expression and freedom of the media in accordance with international standards.

77. The Special Rapporteur urges the Government to respect the right of Malaysians to hold peaceful demonstrations and assemblies and to adhere to international standards on the use of force against demonstrators.

78. The Government is encouraged to align its national law with the provisions of international law relating to freedom of opinion and expression, in particular by introducing more explicit national legislation to facilitate the attainment of a proper balance in the judiciary's efforts to protect human rights in general and the right to freedom of opinion and expression in particular.

79. The Special Rapporteur strongly encourages the Government of Malaysia to take all necessary steps to sign and ratify the International Covenant on Civil and Political Rights, as well as its Optional Protocols.

80. Finally, the Special Rapporteur recommends that the Government give serious consideration to the establishment of an ombudsman's office and of a special commission for human rights or a separate ministry for human rights.

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

Government of Malaysia

Datuk Seri Abdullah Badawi, Minister for Foreign Affairs
Datuk Seri Mohamad Rahmat, Minister of Information
Datuk Tajol Rosli Mohd. Ghazali, Deputy Home Minister, Ministry of Home Affairs

Professionals in the information sectors

Datuk A. Kadir Jasin, Editor-in-Chief, New Straits Times
Ms. Aisha Ali, Features Editor, New Straits Times
Mr. Raphael Pura, Southern Asia correspondent, The Asian Wall Street Journal
Mr. Murray Hiebert, correspondent, Far Eastern Economic Review

Non-governmental organizations

Professor Chandra Muzaffar, President, International Movement for a Just World
P. Ramakrishnan, Aliran Kesedaran Rakyat (ALIRAN)
Mr. Gan, ALIRAN
Raja Aziz Adruce, HAKAM
Ramdas Tikamdas, HAKAM
Sivarasa Rasiah, Suara Rakyat Malaysia (SUARAM)
Irene Fernandez, Director, TENAGANITA
Tunku Abdul Aziz, Coordinator for Malaysia, Transparency International

Other individuals

Dato' Param Cumaraswamy, United Nations Special Rapporteur on the independence of judges and lawyers
Lim Kit Siang, Parliamentary Opposition Leader
Professor Jomo Kwame Sundaram, Faculty of Economics and Administration, University of Malaya
Khairul Bashar, Executive Director, Asian Institute for Development Communication (AIDCOM)
Abdul Razak Baginda, Executive Director, Malaysian Strategic Research Centre (MSRC)
Dr. Wan Aziza, wife of the former Deputy Prime Minister and Finance Minister, Ibrahim Anwar

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression

Mr. Abid Hussain

Report of the mission to Hungary

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Annex

Persons with whom the Special Rapporteur met during the visit 18

GE.99-10773 (E)

Introduction

1. This report has been prepared pursuant to Commission resolution 1998/42. It presents and analyses information received by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression during his visit to Hungary from 9 to 13 November 1998, as well as information received from individuals and non-governmental organizations concerning matters relating to the right to freedom of opinion and expression.

2. By letter dated 27 May 1998 addressed to the Permanent Mission of Hungary to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government for a visit to Hungary. On 10 June 1998, the Government of Hungary granted this request.

3. The Special Rapporteur would like to express his gratitude for the cooperation extended to him by the Government of Hungary in discharging his mandate. He highly appreciates the assistance received from the Government in the organization of his visit. He would like to convey his gratitude, especially to the Minister for Foreign Affairs and his staff, who helped make this visit successful.

4. During his visit, the Special Rapporteur met with representatives of the Government, members of Parliament and the judiciary, as well as with two ombudsmen. He also met with representatives of non-governmental organizations active in the field of human rights, academics, writers, professionals of the media sector and other members of civil society who were of interest for his mandate.

5. A list of persons with whom the Special Rapporteur met during the visit is contained in the annex to this report. The Special Rapporteur would like to take this opportunity to thank those he met for their generous efforts to assist him during his visit to Hungary.

I. BACKGROUND AND CONTEXT

6. Since the end of the communist regime in 1989, Hungary has embarked on a large-scale transition from an authoritarian to a more democratic State which has led to profound political, economic and social changes. During the decade of the regime under Janos Kadar which followed the 1956 revolution, Hungary was considered as the most liberal of the Eastern European countries. The breakdown of the one-party State became an irreversible process and Hungary was proclaimed a republic on 23 October 1989. Hungary rapidly adopted a democratic system and a market economy. This process has been accompanied by a far-reaching review and revision of the entire legal system, including the amendment to the Constitution in October 1989.

7. Parliamentary elections were held in May 1998 and a new Government, led by Prime Minister Viktor Orban of the Federation of Young Democrats/Hungarian Civic Forum Smallholders Party, was formed on 8 July 1998. One of the major tasks of the new Government is to continue the dialogue with Europe initiated earlier with a view to Hungary joining the European Union and the North Atlantic Treaty Organization (NATO), for which two accession agreements were concluded in March 1998 and December 1997, respectively.

8. An important element in the transformation of the political order has been the removal of restrictions on freedom of expression and the media, particularly the lifting of censorship and the abolition of a one-party monopoly over the mass media. To that end, the mass media in Hungary have undergone perhaps the most radical change in the Central and Eastern European countries by embarking upon a process of privatization of the press and overall democratization. Today the print media are completely privatized and the electronic media are made up of a mixture of State-run and private enterprises. In the area of broadcasting, the most significant development was the adoption of the Media Act in 1996, which introduced a legal framework for a liberal broadcasting landscape. In present-day Hungary, the media market is flourishing with a large number of national and foreign newspapers and magazines, as well as private and radio services.

II. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. Legal framework

9. In this section, the Special Rapporteur will briefly consider some aspects of the international and national legal framework governing the protection of the right to freedom of opinion and expression in Hungary.

1. International obligations

10. Hungary has accepted a wide range of international obligations in the field of human rights. It is a party to the International Covenant on Civil and Political Rights, including its two Optional Protocols. Furthermore, Hungary ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1992, as well as the right of individual petition.

11. In its capacity as participating State of the Organization for Security and Cooperation in Europe (OSCE), Hungary accepted many additional international commitments. These include the 1975 Helsinki Final Act, the 1990 Charter of Paris for a New Europe, the 1990 Copenhagen Document and the 1994 Budapest Document.

2. National legislation

12. In the past few years, new laws have been drafted and passed by the Hungarian Parliament providing the legal framework for the creation of a democratic system and of a liberalized market environment.

(a) The Constitution

13. In contrast to other former socialist countries, the transition in Hungary can be described as an approach of change with continuity, attributable to the fact that there was no revolution in 1989 totally sweeping away the Constitution of the former regime. As noted above, the Constitution of the Republic of Hungary, promulgated on 20 August 1949, was amended in 1989 in order to facilitate the transition to a constitutional State and to establish a multi-party system, a parliamentary democracy and a social market economy.

14. Article 61 of the Constitution provides for freedom of opinion and expression as well as for freedom of the press. Limitations on or suspension of these rights can be imposed solely during a state of national crisis, emergency or state of danger, in pursuance of article 8 (4) of the Constitution.

(b) The law on the press and other mass media

15. The 1986 Press Act, which ensures the right of everyone to disseminate his or her ideas in printed form, is still in effect despite several amendments.

16. Under Act XI of 1990 which amended the Press Law, committing a crime or instigation to commit one, degeneration of public morals and lack of respect for the personal rights of others are the only limitations on the freedom of the press. That amendment also entitled any person, natural or juridical, to establish a periodical, a local radio station or a television studio, whereas the previous legislation recognized this right only for the State, social and economic organizations and for associations.

17. Appointment of the heads of public media (Hungarian Radio, Hungarian Television, Hungarian News Agenda) was a government prerogative until July 1990. With a view to achieving a fuller implementation of freedom of the press, Act LVII of 1990 empowered the President of the Republic of Hungary to appoint the heads of these institutions. However, the countersignature of the Prime Minister is required for the exercise of this power.

18. In 1996, a new media law governing radio and television broadcasting was adopted by the Parliament. The objective of Act I on Radio and Television Broadcasting is to ensure: (i) free and independent radio and television broadcasting; (ii) the freedom to disseminate objective and impartial information; (iii) the promotion of culture at the national and international levels; (iv) the prevention of the creation of a monopoly in the provision of information. The Act also provides for the establishment of some institutions and authorities to promote its implementation. Under this Act, all electronic media are overseen and monitored by the independent National Radio and Television Commission (ORTT), a legal entity under the supervision of Parliament. ORTT members are nominated for four years by the Parliament by majority vote, while its President is designated jointly by the Prime Minister and the President of the Republic of Hungary.

19. ORTT was created to ensure the independence of the programme suppliers and to promote and safeguard the freedom of expression by encouraging new programme suppliers to enter into the market, by dismantling the existing information monopolies and preventing the creation of new ones. ORTT has set up a Complaints Committee with a five-year mandate for dealing with complaints in relation to violation of the principle of impartiality of information. Anyone may present objections at this forum concerning the programmes of any broadcasting company and the broadcaster who violated the law must publish the findings of the Complaints Committee without explanatory comments, or propose that the complainant present his view. Serious violations can also result in fines (arts. 49 and 50 of the Media Act).

20. Finally, Act LXXII on Telecommunications of 1992 and Act LXII on Frequency Management of 1993 allowed Hungary to enter the era of new communication. Through these laws and the privatization of telecommunication companies, Hungary developed its telecommunication infrastructure both in terms of quantity and quality. According to the Hungarian Telecommunications Regulatory Environment Authority, whose task includes broadcasting and frequency management, the telephone density in Hungary increased from 8 main lines per 100 inhabitants to 30.4 in 1997, and the number of Internet host computers and terminals has doubled in recent years (from 0 per 1,000 inhabitants in 1990 to 46 in 1997). However, Internet equipment is used more by private companies than by individuals.

(c) Other legislation with a direct impact on the exercise of the right to freedom of opinion and expression

21. Act LXV on State Secrets and Official Secrets of 1995 provides for two cases of State secret: data constitute a State secret when the classifier has determined beyond doubt that their disclosure before the end of the effective period (maximum 90 years), acquisition or withholding from a person entitled to them would violate or threaten the interests of Hungary in terms of national defence, national security, criminal investigation and prevention of crimes, the monetary and currency policy, foreign and international relations, and judicial procedure (art. 3). Official secret means any data whose disclosure before the expiry of validity and unauthorized acquisition or whose use and delivery to an unauthorized person would interfere with the operation of a body fulfilling a State or public function and would prevent it from exercising its official function and authority free from influence.

22. Act LXIII on the Protection of Personal Data and the Publicity of Data of Public Interest of 1992 qualifies personal data concerning racial origin, belonging to a nation or nationality, or ethnic affiliation as special data and provides increased protection to it. According to the provisions of the Act, personal data concerning political opinion or party affiliation, religion or other belief, health condition, pathological addiction, sex life and criminal record are also qualified as special data. A person who unlawfully makes public, or without authorization uses or makes available for non-authorized persons special data as defined in the law, commits the crime of "abuse of special personal data" and shall be punished with deprivation of liberty of up to three years. This Act has also established the Data Protection Commissioner (also known as the Data Ombudsman), a unique institution in the Eastern European region.

23. Act XXIII on Background Checks for Individuals Holding Certain Key Offices of 1994 aims at discovering whether public officials and others occupying key positions in public life have, prior to the new regime, carried out activities for State security organs or obtained data therefrom to assist them in making a decision. If, during the course of a background check, an individual is found to have carried out such activities, the results will be published unless he or she agrees to resign. This Act also applies to those responsible for influencing public opinion, that is persons involved with the media.

3. The establishment of new institutions

24. The cornerstone of the introduction of the rule of law in Hungary is the establishment of the Constitutional Court, in accordance with chapter IV of the Constitution, which began its work on 1 January 1990. Among other things, the Constitutional Court is responsible for determining the constitutionality of statutory provisions and the preliminary examination of certain provisions of draft laws in order to prevent Parliament from adopting laws contrary to the Constitution. The provision - particularly important in case of the violation of any of the rights recognized in the international human rights instruments - allows any individual to lodge a complaint with the Constitutional Court, provided that all other remedies have been exhausted or no other remedy is available, alleging that his rights have been violated by the application of an unconstitutional provision of law.

25. As mentioned above, the Hungarian Constitution was amended and the presence of certain elements of the old Constitution required the Constitutional Court to take a larger role in developing and strengthening the protection of the freedom of opinion and expression. The jurisprudence of the Constitutional Court has significantly enhanced the designation, content, restrictions, as well as the conditions, guarantees and protection of the practice of the freedom of expression. During a meeting with a judge of the Constitutional Court, it was mentioned that in a number of rulings, the Constitutional Court described the independence of public-service media from the State and from politics. In one of its decisions, the Court stated that the State has an obligation to promote and protect freedom of opinion and that freedom of expression is at the top of the hierarchy of all human rights. The Constitutional Court has also passed important rulings on racist and other "hate speech", as well as on the limits of criticism, and has enlarged the right of an ordinary citizen to criticize a public figure.

26. On 30 June 1995, three commissioners were elected by the Parliament: the Parliamentary Commissioner for Civil Rights, the Parliamentary Commissioner for Data Protection and Freedom of Information and the Parliamentary Commissioner for Ethnic Minorities. The commissioners are elected for a period of six years and enjoy broad authority. Their function is to receive petitions or complaints that they investigate in order to give their opinion and recommendations. The Special Rapporteur met with two of the three ombudsmen: Prof. Katalin Gönczöl, Parliamentary Commissioner for Civil Rights, and Mr. László Majtényi, Parliamentary Commissioner for Data Protection and Freedom of Information. The Parliamentary Commissioner for Civil Rights investigates violations of constitutional rights and can initiate general or specific individual measures for remedying them. The Commissioner has examined cases of violations of freedom of opinion and expression, in particular relating to the army, where the limits on this right are different from those existing in civilian society. The investigation conducted by the Commissioner's Office brought to light the fact that the areas of activity to enforce rights are not precisely defined; thus, criticism of acts of superiors is generally prohibited beyond what is specifically guaranteed by law. This regulation consequently narrows down the right to freedom of opinion. However, most of the cases with regard to freedom of expression are examined by the Commissioner for Data Protection (see para. 51).

27. These institutions of ombudsman are complementary to the Human Rights, Minorities and Religious Affairs Committee of the National Assembly. In this regard, the reports of the three ombudsmen are debated by the plenary session of the National Assembly after having been discussed by the above-mentioned committee.

28. As regards the judiciary, the Special Rapporteur had the opportunity to meet with the National Council of Justice, an independent organ, which since October 1997 is administrating the court system instead of the Ministry of Justice. In this regard, the judges and the administration are more independent than in many other countries. The National Council of Justice is composed of 15 members headed by the President of the Supreme Court and served by an administration of 100 persons.

B. Principal observations and concerns

1. The media

29. In order to assess the situation of the right to freedom of opinion and expression in Hungary, the Special Rapporteur met with a large number of media professionals, as well as with members of the two journalists' associations: the Association of Hungarian Journalists (MUOSZ) and the Community of Hungarian Journalists (MUK).

(a) The print media

30. Since 1989, the print media have gone through a significant transformation of the structure of the press and of journalism itself. The print media are today completely privatized and thus enjoy a high degree of independence. All the major print media - national and regional newspapers, magazines and tabloids - are in private hands and some are part of foreign media companies. Although the press is, by and large, free of all controls, the Special Rapporteur was informed of a certain number of issues and controversies which deserve particular attention.

31. The Special Rapporteur noted that a predominant concern was the difficulties arising from the transition from a State monopoly over the media to a system governed by a free market, and the prevailing financial constraints. One concern expressed to the Special Rapporteur was the pre-eminent role played by foreign capital in the media industry. Indeed, the biggest Hungarian newspapers are owned by German and Swiss groups. According to several sources, the intervention of foreigners was very positive after 1989 to gain more freedom, but today, some consider this foreign ownership excessive. However, no evidence of foreign owners' interference with editorial content was brought to the attention of the Special Rapporteur.

32. In addition to this, there is a proliferation of newspapers which cannot survive without the support of private or State sponsors, as well as advertising. A total of 45 national and regional newspapers are published on a daily basis in Hungary. The Special Rapporteur considers that too many actors in the media field make the press very vulnerable financially and more

receptive to outside interference. For that reason, the Special Rapporteur is concerned over the financial dependence which can diminish freedom of expression.

33. In this regard, a recent case on the question of financing of the media was raised before the Special Rapporteur during his visit. On 30 September 1998, the newspaper Kurir was forced to suspend publication after its owner, the Postabank, ceased financing the daily. Another independent weekly, Magyar Narancs, suddenly lost its financing. On 7 October, the Minister of Culture banned publication of Kurir, explaining that the newspaper was published illegally. The Postabank, a Government-controlled bank, also owned five other publications which continue to be published regularly. According to the information received by the Special Rapporteur, the closing down of the two newspapers was done in a very selective way. Kurir and Magyar Narancs were known for their criticism of the Government, which leads one to suspect that political motives were behind the closing down of the two newspapers. On the other hand, the bank maintains its financial support to the other newspapers, which are closer to the Government.

34. This case also raises the concern expressed by certain sources over political interference. The Special Rapporteur noted that journalists are still strongly influenced by political parties. At most editorial offices, journalists feel exposed to dependency relations with owners wanting to influence the daily work and reserving the right to manipulate the provision of information according to their own political interests. A recent survey 1/ indicates that in nearly 40 per cent of journalists' workplaces it occasionally or sometimes frequently occurs that a political lobby tries to pressure editorial offices not to publish an article or programme. The strongest pressure is directed at the daily papers and more particularly on the political press which has wide-ranging influence.

35. Another controversy which was brought to the attention of the Special Rapporteur is the recent proposal of Mr. Béla Pokol, Deputy of the Smallholder's Party and President of the Constitutional Committee, to amend the Code of Civil Procedure with a provision to guarantee the right of reply. Mr. Pokol is in favour of depoliticization and lessening the dependency of the press on financiers, and he thought that his proposal could be a solution. The National Association of Hungarian Journalists (MUOSZ) viewed the proposed legislation as "unconstitutional, a brutal attack against freedom of opinion, and also a starting point of a process of intimidation of the media". In fact, journalists refused to be forced by the law to publish rectifications not only of facts but also of opinions published in the media. The controversy surrounding the proposal and the lack of support of its own coalition led Mr. Pokol to withdraw it. Nevertheless, the Code of Conduct elaborated by MUOSZ allows for a right of reply for "a person who is directly and detrimentally affected by an article or programme item". The Special Rapporteur is of the view that if a right of reply system is to exist, it should ideally be part of the industry's self-regulated system, and in any case can only feasibly apply to facts and not to opinions.

1/ Journalists, press workers, day-labourers by Maria Vasarhelyi.

36. Finally, the Special Rapporteur received information from various sources noting that investigative journalism is quite weak in Hungary. According to several sources, journalists rarely debate or argue against the Government. Some of the persons the Special Rapporteur met indicated that most of the journalists did not perform their work skilfully. The fact that four out of five journalists started their career in the era of dictatorship might have inevitably marked both the mentality and the performance of Hungarian journalists.

(b) The broadcast media

37. The role of television in the transition process is to be regarded somewhat differently from that of the print media in the privatization process, given a number of additional constraints of a technical as well as financial nature.

38. The electronic media were first regulated by the 1986 Press Act, which kept silent about the fact that Hungarian Radio and Television and the Hungarian News Agency (MTI) were special monopolistic institutions of the Hungarian media. In the case of Hungarian Radio and Television, the Act merely stated that it was the only institution allowed to produce radio and television programmes. After 1989, the new legal regulations relating to the media were considered one of the key issues in the democratic transition process.

39. The Special Rapporteur was informed that before the adoption of the Media Law in 1996, freedom of the media was very limited since applications for new licences to broadcast new programmes were denied for a fairly long period on grounds of a frequency moratorium imposed by the Government. Between 1990 and 1994, a so-called "media war" broke out between the Government on the one side, and the President of the Republic and the opposition on the other. During this period, the Special Rapporteur sent an allegation to the Government of Hungary, on 1 September 1994, to express his concern over the dismissal of 129 journalists of Magyar Radio on 3 March 1994 and of 12 journalists of "168 hours", a popular weekly political production of Radio Kossuth, one of the three national broadcasting stations. According to the journalists, the dismissals were an attempt to silence criticism of the Government two months before the scheduled national elections. The Government provided the Special Rapporteur with a reply on 17 October 1994, informing him that the situation of the 141 journalists had already been resolved, since all the journalists having not attained the age of retirement established by law had been reinstated with appropriate reimbursement of their salaries (see E/CN.4/1995/32, paras. 113 and 114).

40. Since there was no media law until 1996, the Constitutional Court found itself in the role of arbitrator and made a number of important rulings on the subject of a balanced electronic media market, as well as on independence from the State. These legal elements were later incorporated into the final version of the Media Law by the legislators.

41. Parliament passed the Media Act in 1996 creating institutions designed to foster free and independent electronic media. The law provided for the creation of nationwide commercial television and radio, and insulated the

remaining public service media from government control. With the adoption of the 1996 law and the subsequent licensing of private electronic media, the media landscape in Hungary changed substantially. The private and the public sectors are now coexisting. Since the National Radio and Television Commission (ORTT) started working, two private TV stations (RTL Klub and TV2) and a number of local TV stations have been licensed, as well as nationwide regional and local radio stations. The former State radio stations now operate as public broadcasters. Hungarian radio as well as Duna TV provide programmes for the 5 million Hungarians living abroad.

42. Several concerns have been expressed with regard to the area of television broadcasting. The Special Rapporteur's attention was drawn to the fact that the two largest State-owned TV stations - MTV and Duna TV - are suffering from the competition of cable and satellite TV stations as well as from the new commercial TV, which is becoming increasingly popular. Since MTV is facing serious financial problems, a 500-million-forint loan was granted to the channel by ORTT from the Broadcasting Fund. The financial resources of this special fund, which was set up under the Media Act, come, among others, from broadcasting fees. Its aim is to support public service broadcasting and programmes, as well as public and non-profit broadcasters, to preserve and further develop culture. The Special Rapporteur is concerned over the fact that this financial dependence of the State TV could lead to an increasing loss of autonomy of the programmes. A blueprint should be worked out to ensure autonomy for a period of time and to find an alternative solution.

43. Concern was also expressed by the academic community about the loss of quality in Hungarian TV. According to the information provided to the Special Rapporteur, the level of political debate is getting lower because of the increase in soap-operas and series from Western Europe and the United States. Since the influence of TV is very high in Hungary (Hungarians watch more TV than any other Europeans), fear has been expressed over the stagnation, or even lowering, of the level of culture and a loss of Hungarian identity. The Special Rapporteur's answer to the fear of globalization is that the Government should be able to manage - and not to control - what some call the "commercial invasion".

44. Nevertheless, the Special Rapporteur notes with satisfaction that there are a certain number of talk shows on human rights issues broadcast on Hungarian TV. During a meeting with the Vice-President of MTV, the Special Rapporteur encouraged him to promote even more this type of programme on themes such as neglect of children, gender inequality, and even controversies relating to the freedom of opinion and expression.

45. As mentioned above, ORTT members are nominated by the parliamentary parties and elected by the Parliament, while the President of ORTT is nominated jointly by the State President and the Prime Minister. While this arrangement gives the parties a position in the media landscape which some regard as too dominant, it also provides for representation of both governing and opposition parties. As a result, most parties had no complaints about media coverage of the last election campaign (10-24 May 1998), which was observed by an OSCE Election Observation Mission. However, the Special Rapporteur notes the controversies that have arisen with regard to allegations that ORTT, during its first year and a half of operation, was politically

biased in awarding television licences. Some journalists alleged that it institutionalized political party influence in the running of the media. Others have criticized ORTT for its attempts to acquire a share of the National Broadcasting Company, thereby becoming an owner in the industry it regulates. Two lawsuits have been filed against the ORTT, in both cases raising the question of whether the Board is truly insulated from politics as intended by the law.

46. The Special Rapporteur considers that public radio and television should be independent of the State as well as of the Parliament, the political parties and any other social groups. The legislation must exclude the possibility of State authorities or of any groups influencing the programmes in such a way that would damage the balance, free expression and impartiality of information. If the new legislation has contributed to separating the broadcast media from the influence of the State, they nevertheless remain dependent upon political parties. In particular, the Special Rapporteur would recommend a stronger autonomy for ORTT in order to avoid too much politicization of this body and to enhance its professional character. At the same time, the Special Rapporteur must recognize that the Media Act constitutes great progress in the field of freedom of opinion and expression in Hungary.

2. Other concerns relevant to the promotion and respect for the right to freedom of opinion and expression

(a) Legal restrictions on freedom of expression

(i) **State secrets**

47. The right to freedom of opinion and expression includes the right to seek and receive information, which also means that citizens have the right to get information of public interest and have the right to inspect official documents. While journalists have a professional and moral obligation to expose data of public interest, they must also be aware of the restrictions and sentences imposed by criminal law.

48. The Special Rapporteur was informed that under Hungarian law, a document can only be "secret" or "non-public" if it has been so classified through an official procedure by competent bodies or persons and authorized by statutory means, or if the publication of a particular document has been restricted by law. The unlawful acquisition and processing of a State secret, its disclosure to an unauthorized person or its denial to a person entitled to it carries a sentence of one to five years' imprisonment. Involuntary violation of a State secret is also punishable with imprisonment for one year.

49. In this regard, the Special Rapporteur was informed that the editor in chief of Nepszava (People's Voice) published before the election in May 1998 the draft agreement between Hungary and Slovakia on the construction of a hydroelectric dam on the Danube. This contract was a sensitive issue which involved the Hungarian Socialist Party. According to the information received, a police investigation was initiated and the secret police came to the newspaper office as publication was considered to be a violation of the State Secrets and Official Secrets Act. The editor in chief complained to the Commission for Data Protection and Freedom of Information who investigated the

case and issued a decision saying that the editor had not committed any crime; on the contrary, he had served the best interest of the public who had to be aware of this agreement. Some time later, eight editors in chief published a declaration in the press to defend their colleague from Nepszava. The Special Rapporteur was told of the alleged political interests involved in this case and is very appreciative of the fact that there was redress available.

50. Several journalists also complained about the fact that some of the parliamentary sessions are closed although there is no reason for this. The Special Rapporteur agrees that certain meetings or negotiations can obviously not be open to the public but access to information should be made available as much as possible. It seems that secrecy is part of the inherited legislation of former socialist countries in which power and statecraft played a central role, while the protection of the personality was pushed into the relative background.

(ii) **The issue of data protection**

51. Personal data are protected by the Constitution and by Act LXIII on the Protection of Personal Data and the Publicity of Data of Public Interest of 1992. According to article 2, paragraph 3, of this Act, "Data of public interest means any information under processing by an authority performing State or local self-government functions or other public duties, except for personal data". These data of public interest can be accessible to anyone, except when they are classified as secret data or if their publication is restricted by law.

52. The 1992 Act gives the legal basis for the nomination of the Parliamentary Commissioner for Data Protection and Freedom of Information, or Data Ombudsman, who is a State official with a high degree of legitimacy since he is elected by a two-thirds majority in Parliament. Besides monitoring both data protection and freedom of information in general, the Data Ombudsman's task includes the investigation of complaints, the maintenance of the Data Protection Register, and the giving of opinions on data protection and freedom of information-related draft legislation and on each category of official secret. The Ombudsman makes recommendations on the extension or limitation of the criteria for classifying data and, according to the Secrecy Law of 1995, is entitled to change the classification of State and official secrets as well.

53. The Special Rapporteur's attention was drawn to the fact that the legal relationship between data protection and the media should be improved. In this regard, the Data Ombudsman reached a "gentleman's agreement" in 1996 with the National Police Chief and a group of journalists from MUOSZ to concentrate on the protection of the presumption of innocence and the personal rights of the victims, while striving to sustain the freedom of the press to inform the public.

(iii) **The "Lustration Act"**

54. Act XXIII on Background Checks for Individuals Holding Certain Key Offices of 1994, or Lustration Act, is a typical product of the change under way in the former socialist countries of Eastern and Central Europe, with the

difference that it neither declares incompatible the holding of past and present office, nor proposes to unveil the whole of the previous system of political informing. The Special Rapporteur was informed that this Act promotes transparency and publicity rather than punishment of those in prominent political and other public roles. In fact, those found to have belonged to the former regime are not automatically dismissed from their post.

55. It was brought to the Special Rapporteur's attention that, further to petitions seeking the review of the constitutionality of the above-mentioned Act, the Hungarian Constitutional Court passed a decision (decision 60/1994 of 24 December 1994) in which it declared, inter alia, that data and records on individuals holding positions of public authority and those who participate in public life be considered as information of public interest, as provided by article 61 of the Constitution. Furthermore, the Court declared unconstitutional and discriminatory the fact that the Act applies to the members of the public print media, who can be subject to a background check, and not to members of the Hungarian electronic media.

56. During the mission, the Special Rapporteur was informed that members of Parliament intend to present an amendment to the Act to extend its application to all journalists. The Special Rapporteur is of the view that this law could be used in an arbitrary fashion since journalists could be brought to public attention on the basis of unproven information and could eventually turn out to be innocent. As the media are becoming more and more important in Hungarian society, this law could be misused to silence some journalists selectively.

(b) The minorities

57. Among the 13 ethnic minorities recognized in Hungary, the Roma constitute the largest and the most sensitive group. For this reason, the Special Rapporteur wishes to concentrate on this specific ethnic minority and assess their exercise of the right to freedom of opinion and expression.

58. Act LXXVII of 1993 on the Rights of National and Ethnic Minorities establishes the concept of collective rights of minorities. It explicitly permits organized forms of limited self-government in areas where ethnic groups constitute a majority. This Act, as well as the 1996 Media Law, ensures that public service TV and radio produce and broadcast minority programmes in order to promote the languages and cultures of the national and ethnic minorities in Hungary. The creation of the Parliamentary Commissioner for National and Ethnic Minorities is another positive step in favour of the protection of the rights of minorities in Hungary.

59. The last annual report of the Ombudsman on Minorities which was provided to the Special Rapporteur indicates that as regards the number of complaints from each minority, the majority were Roma (63 per cent). A large number of complaints were related to the administration of justice and some of the cases provoked serious debate in the media among journalists and others. The Ombudsman noted that information in the media about Roma cases fails to be objective, which tends to encourage prejudice.

60. Indeed, the Special Rapporteur's attention was drawn to the fact that the Hungarian media have not been able to alleviate the prejudices of the majority population against Roma. In fact, the Special Rapporteur was told that the media coverage of the Roma is strongly dominated by stories of conflicts and problems. Also, participants are forced into passive roles and are not given the chance to articulate their opinions in the media reports. According to the Roma themselves, they regret being represented by the media only in specific minority-related roles, and rarely as integrated and active participants in society.

61. Nevertheless, the Special Rapporteur considers that in Hungary, the Roma's access to - and their image in - the media is better than in some other countries of Central and Eastern Europe. The Roma and minorities in general have satisfactory access to information. Indeed, in today's Hungary, there are minority-language print media, and the State-run radio broadcasts programmes in the mother tongue of major nationalities, i.e., Slovak, Romanian, German, Croatian and Serbian, for two hours daily. As far as Roma are concerned, eight Romani papers are published and Hungarian TV broadcasts a 25-minute weekly programme and a 30-minute programme on Hungarian Radio. For the TV programme, the Special Rapporteur would recommend a better time slot as it is broadcast on Monday at 2 p.m. and on Saturday morning at 9 a.m. However, the Special Rapporteur notes that the Hungarian programme "Napkelte" appears to be sensitive to Roma issues since Roma representatives are often invited. Furthermore, the Special Rapporteur was informed that the presence of the Roma in the Hungarian press - which was previously a taboo topic - has recently shown a remarkable increase in terms of frequency and emphasis of their coverage.

62. With regard to the minority print media, concern was expressed over the financial pressure they suffer, as well as the fact that they are under greater control of the Government than the Hungarian media in general. The other problem raised by the source is that, owing to their low educational level, most Roma get their information from television, fewer listen to the radio and only a limited number read newspapers.

63. Finally, the Special Rapporteur considers that more has to be done to integrate minorities into the media. Since there are a limited number of educated Romani journalists, training should be increased and promoted by the Government. The Special Rapporteur would thus encourage the initiative taken by NGOs to provide training of Roma media professionals.

III. CONCLUDING OBSERVATIONS

64. The Special Rapporteur welcomes the expressed commitment of the Government of Hungary to democracy, the rule of law and human rights, in particular the right to freedom of opinion and expression. He notes the strong desire to catch up with European standards, which certainly brings dynamism to both the economic and political sphere and the area of individual freedom.

65. The Special Rapporteur notes with satisfaction that the legal environment in Hungary is in accordance with international standards in the field of human rights, particularly the legal guarantees offered to the right

to freedom of opinion and expression. In this context, he welcomes the role played by the Constitutional Court to enlarge and further protect this right, as well as the work accomplished by the three ombudsmen.

66. The Special Rapporteur can assert that freedom of opinion and expression is widely apparent in Hungary. Censorship was abolished some years ago, and the media have been operating in a free and independent environment after the State monopoly was eliminated. Along the same lines, the Special Rapporteur observes that freedom of opinion and expression clearly finds the protection it warrants and any attempt at restriction is closely scrutinized by all sectors of society. The controversy around the proposal to introduce the right of reply in Hungarian law and the withdrawal of the proposal in order to redraft it shows that healthy debates take place, which is strong evidence of democracy in practice.

67. However, freedom of the media has in practice been hindered to some extent by the contingencies on independent or opposition publications of financial pressure combined with pressure from political interests. The Special Rapporteur would like to emphasize his view that the right to freedom of expression should not be restricted by indirect methods or means such as the unequal allocation of publicity spots or through the intervention of political parties to facilitate issuance of licences. In this regard, the Special Rapporteur would like to emphasize that the full enjoyment of the right to freedom of opinion and expression in Hungary can be further strengthened only if the media are less dependent on the patronage of the State, the political parties and financiers.

68. The Special Rapporteur is also concerned at the use and implementation of certain laws to restrict the right to freedom of opinion and expression. He is of the view that a democracy can only work if the citizens and their elected representatives are fully informed. With the exception of a few types of documents, it is desirable to make government documents public in order to allow the citizen to know that public funds are being utilized correctly. Thus, the Special Rapporteur notes, in order for journalists to be able to carry out their role as watchdogs in a democratic society, it is indispensable that they have access, granted on an equitable and impartial basis, to information held by public authorities.

69. The Special Rapporteur welcomes the efforts undertaken in the area of public broadcasting, particularly with regard to pursuing a policy of public service broadcasting. However, he is concerned about allegations of political influence in television, which is attributed to a lack of independence of the National Radio and Television Commission. Indeed, in view of the impact and considerable influence of radio and television, complete independence from political and private interests is of paramount importance.

70. The Special Rapporteur welcomes the positive measures taken by the Government of Hungary to promote and guarantee the right to freedom of opinion and expression of minorities. However, he notes that additional efforts should be undertaken in order to make Hungarian journalists sensitive to the needs of minorities, in particular the Roma, and to eliminate prejudices which prevent their full integration. He would also encourage the promotion of minority media since he considers this to be one of the most important means

through which a minority can preserve its identity. In this context, the civil society, which the Special Rapporteur considers to be very well developed in Hungary, has a great role to play.

71. The Special Rapporteur observes that previous practices and attitudes linked to the former regime are slow to change in many ways. Indeed, as a consequence of the 40 years of communist rule, there are still some reflexes of self-censorship which hamper the development of the press. The Special Rapporteur is nevertheless convinced that the legacy of the past can gradually be overcome through adequate training of journalists, which can be of help in gaining a more well-balanced press.

72. Finally, the Special Rapporteur considers that the experience of Hungary in transforming its political and economic systems and adapting its legal framework to international standards of democracy and human rights can be of value in assisting other countries in the region in their own transition process and in building up constructive cooperation with other countries in the region.

IV. RECOMMENDATIONS

73. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations for consideration by the Government. In view of the open and constructive exchanges of views that took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

74. The Special Rapporteur welcomes the establishment of the three ombudsman institutions but would recommend in addition the setting up of a National Institution on Human Rights.

75. The Government is strongly encouraged to ensure that the protections provided for in the Constitution and the Media Law are always the rule and that any restrictions on the right to freedom of expression remain the exception, bearing in mind that such restrictions must be limited only to those permissible under article 19 of the International Covenant on Civil and Political Rights.

76. The Special Rapporteur urges the Government to ensure that future legislation and its implementation are in compliance with article 19 and other relevant international standards. The Government is also encouraged to consider ways to ensure that the process of introducing future legislation that may affect freedom of expression and media freedom is transparent. The Government may also wish to consider ways of including the media professionals in this process, to continue its cooperation with international organizations and to benefit from the advisory services.

77. The Special Rapporteur urges the Government to consider all necessary measures to limit the financial pressure on the media by providing funding facilities for a certain period of time to newspapers in financial difficulty. This financial support should be accorded through provision of a special

autonomous fund operating on a non-discriminatory basis. With regard to the financing problem of the public service TV, the Special Rapporteur would recommend calling on other ministries to participate in the financing of programmes relevant to them as well as writers and artists to create specific programmes on a cost- and profit-sharing basis. The Special Rapporteur is nevertheless of the view that TV should be barred from direct budgetary support to avoid exclusive dependency on the State exchequer.

78. The Special Rapporteur urges the Government of Hungary to take all necessary steps to ensure the continued independence of the National Radio and Television Commission (ORTT). Steps towards the achievement of this goal should include a review of the membership of ORTT to ensure total independence from the Government and political parties. Appointment procedures could include public hearings and be organized according to criteria providing for diversity and selection depending on professional expertise. In this regard, the Special Rapporteur would recommend that media professionals, intellectuals and representatives of civil society be integrated into ORTT.

79. In accordance with the recommendations of the Committee on the Rights of the Child of June 1998, and the Human Rights Committee of August 1993, the Special Rapporteur encourages the Government to strengthen its efforts to disseminate the principles and provisions of the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, as well as all other texts in the field of human rights, to NGOs, the mass media and the public at large, including children themselves, in order to increase the accessibility to information by children from rural, poor and minority communities.

80. While the Special Rapporteur notes with appreciation the measures taken by Hungary to improve the living standards of the Roma population, he remains concerned about the persistent pattern of prejudice and discriminatory attitudes towards this minority group. The Special Rapporteur wishes to encourage the Government and the NGO community to provide adequate training to Roma journalists and to use the media to improve the image of the Roma in Hungary. The State should inculcate a strong sense of justice and a realistic idea of integration through a process of innovation in the spheres both of civil society institutions and of the general public. Encouraging signs in this regard were evident which deserve appreciation.

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

Officials

Mr. László Tóth Gy., Special Adviser to the Prime Minister of the Republic of Hungary; Mr. Guyla K. Szelei, Director-General for International Organizations, Prof. Dr. Péter Kovács, Head of the Department of Human Rights and Minority Law Directorate, Mr. Csaba Mohi, Senior Counsellor, Ministry for Foreign Affairs; Dr. Háltz Lipót, Deputy State Secretary, Mr. Tamas Ban, Director of the Human Rights Department, Mrs. Paullina Oros, Chief of the Constitutional Law Section, Mr. Zoltan Tallodi, Legal Adviser to the Human Rights Department, Ministry of Justice; Dr. Béla Pokol, Member of Parliament, Chairman of the Committee on Constitutional and Judicial Affairs; Dr. Mátyás Bőrsi, Member of Parliament, Alliance of Free Democrats; Prof. Katalin Gönczöl, Parliamentary Commissioner for Human Rights (Ombudsman); Mr. László Majtényi, Parliamentary Commissioner for Data Protection and Freedom of Information; Mr. Antal Adam, Judge of the Constitutional Court and Professor of Public Law; Dr. János Zanaty, State Secretary, President of the National Council of the Judiciary; Dr. Kósa Magda Kovács, member of Parliament, Chairperson of the Parliamentary Committee for Human Rights, Minorities and Religious Affairs and two of its members.

Media professionals

Mr. Miklós Martin-Kovács, Editor-in-chief, Magyar Radio; Mr. D. Horváth Gábor, Editor-in-chief, Napi Magyarország (Daily Hungary); Ms. Ilona Kocsi, Editor-in-chief, daily Magyar Hirlap (Hungarian News); Dr. Pál Bőtvös, Editor-in-chief, daily Nepszabadsag; Mr. István Wintermantel, Vice Editor-in-chief, daily Magyar Nemzet (Hungarian Nation) and Mr. Lajos Pietsch, Chief of the Foreign Department; Mr. Péter Feledy, Vice-President, MTV (Hungarian TV); Mr. László Lugossy, Vice-President, Duna TV; Mr. István Wisinger, President of the National Association of Hungarian Journalists (MUOSZ) and six of its members; Mr. Csaba Kósa, President of the Community of Hungarian Journalists (MUK) and four of its members; Mr. Miklós Haraszti, member, Presidium of the Board of Trustees, Hungarian Radio Public Foundation; Mr. Mihály Révész T., President of the National Radio and Television Board and four of its members.

Academics

Dr. László Valki, Professor of Public International Law; Dr. Ferenc Mádl, university professor; Dr. István Schlett, university professor; Mr. Gáspár Bíró, Professor at the Law Faculty.

Non-governmental organizations

Mr. Gábor Halmai, member of the "Nyilvanossag" (Publicity Club) and Director of the Human Rights Information and Documentation Centre; Mr. Ferenc Kőszeg, Executive Director of the Hungarian Helsinki Committee; Ms. Gordana Jankovic,

Programme Director, Regional Media Programme, Mr. Orhan Galjus, Programme Manager, Network Media Programme-Roma Media Fund, Open Society Institute; Dr. Marton Ill, President of the Center for Defence of Human Rights; Ms. Anna-Mária Bíró, Project Manager, Minority Rights Group International; Mr. Gábor Miklósi, International Coordinator, Roma Press Centre; Mr. Aladár Horváth, President of the Foundation of Roma Civic Rights.

Others

Mr. István Csillag, Penzugykutato - Rezvenytarsasag (research institute); Mr. István György Tóth, Director, "Tarki" Public Opinion Research Institute, Public Opinion Poll Agency; Dr. György Konrád, writer; Dr. Béla Pomogáts, President of the Hungarian Writers' Association; Mr. Alajos Kauser, President of the Hungarian Communication Authority; Mr. Ádám Levendel, Director of "Szonda Ipsos", Media, Opinion and Market Research Institute.